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MORAL LAW

AND

CIVIL LAW

PARTS OF THE SAME THING

BY ELI F. RITTER

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1910

STATE NORMAL SCHOOL
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Preface

MANY years ago, in an important trial in the city of Indianapolis, it was sought to break down the very strong testimony of a witness by showing that his character was bad. It was not an attack upon the general reputation of the witness for truthfulness and veracity, but the inquiry was directed to his general moral character. About the same time, in another case in the same court, upon the application of a man to be admitted to the bar, a question was raised upon his moral character. A few weeks later, in another case, in another court, in the same courthouse, upon an application of a man for a license to sell intoxicating liquors, an issue was made upon his moral character. In each of these cases witnesses testified on each side of the question. In each case witnesses who testified to the good moral character of an indi-

vidual, on cross-examination specified truthfulness, honesty, and some other elements of morality which were characteristic of the individual, but admitted defects in some of the moral elements of good character, while witnesses who testified to the bad moral character, on cross-examination specified defects in the moral character of the individual and immorality in certain regards in support of a general statement of bad moral character. And another case was a suit on a promissory note in which a defense was successfully made that the note was given for an immoral and hence illegal consideration. I was, at the time when these cases were tried, a young practitioner at the bar. I was very deeply impressed in each case by the apparent uncertainty in the minds of witnesses as to what is meant in the law by moral character and morality; not only the uncertainty in the minds of witnesses in these regards, but also the manifest uncertainty in the minds of attorneys and judges in the same regard. On account of these exhibitions of uncertainty I became greatly confused in my own mind upon this subject. Lawyers and judges in each of these cases undertook to explain to witnesses what was meant by moral character and morality, and in doing so made it very clear that they had no more definite ideas upon

the subject than the witnesses had. From my experience in the practice of law and other business and social relations since the trial of the cases to which I have referred, having seen the same questions often arise in the trial of cases in court, I have become satisfied that the general public has no definite idea, neither is there generally a clear understanding among lawyers and judges, as to the meaning of "morality," "moral character," and "immorality" in legal contemplation. Truthfulness, or business honesty, or generosity, in fact, every other term that is used in speaking of the characteristics of individuals, seems to be quite well understood. Judges, lawyers, witnesses, and the public generally can deal with these terms with confidence in their understanding, but when the question of legal morality is raised the minds of all at once become clouded. The question as to what is meant by the terms "morality," or "moral character," or "immorality," is generally settled upon an assumed moral standard in a particular locality or the peculiar views of each individual. The impression seems to largely prevail that this question may be settled by adding up the good qualities in one column, the bad in another, and striking a balance. This is a very dangerous process. I have known men of many most excellent qualities, but in

one respect almost, or quite, totally depraved. Their good qualities were used to give them greater influence in the line of their depravity.

There seems to be a fair degree of certainty in the public mind generally as to the meaning of Christianity or Christian morality. The great uncertainty in the meaning of these terms arises when they are used in legal contemplation. As morality and moral character are terms in very prominent and constant use in judicial proceedings, they must have some definite meaning, and there must be some way of determining definitely what they do mean. The purpose of this book is to aid in settling these questions. I claim no new discovery in the meaning of terms, and what I should appreciate as the highest compliment that could be paid to this work would be to have it proved that what is claimed by the author for the legal contemplation of morality has been a settled question for a great many years.

If I can succeed in calling attention to and aid in the correction of errors in the comprehension and application of, this term, and aid in arousing sentiment in support of morality in the fundamental position it occupies in civil affairs, I shall have accomplished my purpose and feel gratified. I have not undertaken to give exhaustive consideration to the subject considered, but to present and support them in

the briefest possible way that I could do, putting the reader upon a line of investigation which can be pursued to great extent and profit.

ELI. F. RITTER,
Indianapolis, Indiana.

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Moral Law and Civil Law Parts of the Same Thing

CHAPTER I.

Law of Public Necessity.

THERE is a law now in full force in every State in this Union, in the government of the United States, and in every government in the world, that was hoary with the frosts of centuries when Moses bared his feet in the presence of the burning bush, and that has ever since been the fundamental law in every civilized government of the world. If you were to ask me for the book and page where this great law, with its full scope and specific provisions, might be found, I should not, neither would any other lawyer, be able to give them to you. I refer to the law of public necessity. This is not only an important law, but it is the supreme law of every

government and every land. This law was defined and given its position in the Roman government before the beginning of the Christian era in the following maxim, **"Salus Populi Suprema Lex,"** which is translated to-day into the English language by the expression, "The Public Welfare is the Supreme Law." While I may not be able to give you the scope and specific provisions of this law, I may aid the reader in gaining fuller comprehension of the same by a few illustrations.

When the city of Chicago was on fire in 1871 and had been for nearly two days, and the city government had become exhausted in its efforts to suppress the flames and had acknowledged its defeat, and the State of Illinois stood paralyzed in the presence of the fire king. General Sheridan was placed in command, and became substantially the only governing force for the time being in that locality. General Sheridan was the man to meet the demands of an emergency. He did not stop to ask the lawyer of Chicago what he could lawfully do, nor the business men what was expected of him. He proceeded to do what the necessity of the occasion required. He placed powder in the basements of a row of buildings two squares long, and at a given signal blew up and utterly destroyed the buildings, with their contents. Those buildings and their con-

tents were private property. Individuals held the title. The owners were not asked to consent, and their objections were unheeded. Their property was destroyed, and there was no provision of law by which any compensation could be recovered. This action was authorized and justified by the law of public necessity.

Years ago a railroad train, loaded with passengers, leaving a Southern city, was stopped in a rural locality, run on to a switch, and compelled to stand still for two weeks without allowing any passenger to leave. This interference with the rights of the passengers, and their imprisonment, was justified under a public necessity to prevent the spread of yellow fever.

A few years ago officers of the law went to the residence of a prominent citizen of Philadelphia, and informed him that they were ordered to convey his wife to the pesthouse because she was afflicted with smallpox. He did not consent, claiming that he had made ample provision for her care and the prevention of any public hazard on account of her disease. Regardless of his resistance, his wife was taken out of bed by force, and carried away to the pest hospital. The husband followed the ambulance to the door of the hospital and asked to be admitted, that he might be with

his wife in her sickness, but he was refused. That man's wife died—he never knew when—and was buried—he never knew where. If there is any right among men more sacred than all others, it is the right to be with and care for members of our own families in time of sickness, to stand by them in the hour of death, and to bury them in a place selected by us for that purpose, where the last resting place may be marked and visited. Yet that most sacred of all rights has not a feather's weight when it come in conflict with the law of public necessity.

In 1863 the government of the United States needed men for military duty. A draft was ordered in Indiana to meet the emergency of the last call for troops and to add to the thousands of her sons who were already in the field as volunteers. Among those who were drafted was a poor man in southern Indiana. When notified, he said: Surely the government will not make me leave my feeble wife and three little children and go into the army. I have no way of providing for them while I am gone, and I have no money to hire a substitute." However touching such an appeal might be, it could not be regarded. He was compelled to leave that family mainly to the care of neighbors, was forced into the army and onto the field of battle. At night, after

the first day of that bloody battle of Chickamauga, among the dead bodies brought together was found the mangled and lifeless body of the poor conscript. As his comrades looked into the glassy eyes and pallid face, and thought of the poor, sick wife and little children in their helpless condition, they said, "It was a hard thing that the government required this poor man." But when the government has battles to fight, neither inconvenience, personal hazard, nor the needs of a family can excuse any man from its call to arms.

A citizen of Indianapolis years ago, who possessed all the privileges and rights that any other citizen in the city possessed, was suddenly arrested, tried, convicted, condemned, and on a day fixed for that purpose was compelled to ascend a scaffold, a rope was adjusted about his neck, his hands and feet were tied, the platform on which he stood was sprung, and he was strangled to death. While the lifeless body of that man hung suspended between the heavens and the earth, an opportunity was offered to philosophize on the rights of an individual. An execution was issued upon the judgment rendered in his case, for costs, and every dollar's worth of property he had in the world was sold, and the proceeds applied to pay the expenses of the judicial proceedings that ended with the taking of his

life. He had been deprived of all his rights of property, liberty, the pursuit of happiness, and life itself. All this because he had violated a law of public necessity, made in the interest and for the protection of society. It is true this proceeding was under a statute, yet such a proceeding would have been lawful if there had been no statute, being authorized by the common law, and existed in the day when Haman was hanged by order of Ahasuerus.

The officers of the law may enter a man's house, and analyze the water in the well, and say to him that the water has in it the germs of disease, he must not use it—neither himself nor his family—nor permit anyone else to use it. He may answer: "This is my property; I had that well dug; we have used that water for twelve years. I like it, and this is a free country." Nevertheless, if he disregards the injunction, he may be arrested, fined, and imprisoned, and that well—that poison fountain—filled to the brim to prevent the spread of disease, and he may be compelled to pay the expenses of all these proceedings. They may examine the milk in the pantry, and destroy it because it is unhealthful. All this is under the law of public necessity, to prevent the spread of disease. There will be no conflict upon the proposition, that anyone with his whole family may be absolutely restrained from using food,

milk or drinking water that is unhealthful. When the question is settled that a food or a fluid is unhealthful the law of public necessity asserts that it shall not be used. It would not be difficult to find illustrations of this principle in every State and in every government. The law of public necessity is only limited by the necessity itself. Whatever the public necessity requires to be done can be legally done anywhere. It is not conceivable that there should be a public necessity and no law to meet it, and the public be thereby left helpless. It can be readily seen that no individual can assert a personal right against the law of public necessity. **There is no such thing, and never was, as an absolute individual right to do any particular thing, or to eat or drink any particular thing, or to enjoy the associations and bliss of one's own family, or to live, in conflict with the law of public necessity.**

The law of public necessity demands that everything which it requires to be done shall be done. It also, with the same authority, commands that everything which it requires not to be done shall not be done. I present another phase of this law by illustrations. Secs. 4569 and 4570, revised statutes of the United States, applying to every vessel that flies the flag and claims the protection of this government, read as follows: Sec. 4569. "Ev-

ery vessel belonging to a citizen of the United States, bound from a port in the United States to any foreign port, or being of the burden of seventy-five tons or upward, and bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall be provided with a chest of medicines; and every sailing vessel bound on a voyage across the Atlantic or Pacific Ocean, or around Cape Horn, or the Cape of Good Hope, or engaged in the whale or other fisheries, or in sealing, shall be provided with, and cause to be kept, a sufficient quantity of lime or lemon juice, and also sugar and vinegar, and other antiscorbutics, to be served out to every seaman as follows: The master of every vessel will serve the lime or lemon juice, and sugar and vinegar, to the crew within ten days after the salt provisions mainly have been served out to the crew, and as long afterward as such consumption of salt provisions continues; the lime or lemon juice and sugar daily at the rate of half an ounce each per day; and the vinegar weekly at the rate of half a pint per week for each member of the crew."

Sec. 4570. "If on any such vessel, such medicines, medical stores, lime or lemon juice, or other articles, sugar and vinegar, as are required by the preceding section, are not provided and kept on board as required, the mas-

ter or owner shall be liable to a penalty of not more than five hundred dollars; and if the master of any such vessel neglects to serve out the lime or lemon juice, and sugar and vinegar, in the case and manner directed, he shall for each such offense be liable to a penalty of not more than one hundred dollars; and if any master is convicted for either of the offenses mentioned in this section, and it appears that the offense is owing to the default of the owner, such master may recover the amount of such penalty, and the costs incurred by him, from the owner."

It will be readily seen that these sections require that the supplies therein named shall be provided, and issued, and used.

This law has been enforced, and convictions and penalties adjudged under it, in a number of cases. Years ago the captain of a vessel was brought before the United State Court in San Francisco, charged with failing to issue lime juice, of which he had a supply, upon a voyage just ended. He answered, admitting the charge, but saying that the men had asked for an extra ration of coffee instead of lime juice, and as he saw no necessity for the lime juice, he yielded to the wishes of the men. The court held that the officer was not made the judge of the necessity for issuing the lime juice; the law was peremptory, and it must be

obeyed; and the officer was fined. However, as he had acted from good intention, his fine was merely nominal.

The legal question has been settled in this country, that any government, having jurisdiction, may require children or adults to submit to vaccination in order to prevent the spread of smallpox.

If the government of the United States, for the protection of the community on a great steamer that numbers its crew by the hundreds and its passengers by the thousands, or the little whaler that has a few persons on board, may repuire that lime juice, onions, or other specific shall be provided and used to meet the needs of, and to protect, such community on the high seas, and a government may require vaccination for like purpose on the land, then the United States government, or any other government, may make the same, or any, provisions and requirements for such communities on the land as public necessity may require in any case. Upon these illustrations I present the proposition, **that there is no individual right to refuse to eat, or to drink, or to do any particular thing, or all things, that the public necessity may require.**

We citizens may as well get ourselves in readiness to abstain from eating food, drinking water or milk **or any other fluid,** or from

doing any and every thing that may be condemned by public necessity; and also hold ourselves in readiness to drink lime juice, eat onions, or any other specific, or do anything that may be required of us by the law of public necessity.

In Town of Lake View vs. Rose Hill Cemetery Co., the Supreme Court of Illinois defined the police power to be: "The law of overruling necessity." 70 Ill., R. 191. This brief definition of police power is fully sustained by authority.

Some one may say that if these propositions of law were correct, then civil government, at best, is legalized tyranny. Let us not misapprehend the effect of these propositions; let us bear in mind that the government must seek to promote the public welfare. In so doing, hardships may sometimes come to the innocent, and of necessity transgressors must be treated as outlaws, and pursued with relentless justice, that civil government, public health, public peace, morality, and good order may be protected; that the weak may be sheltered from the oppressor; that good citizenship may be encouraged and bad citizenship suppressed.

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In this chapter I have been endeavoring to present the rigid rules and extreme requirements of the law of public necessity. I have done this to meet the prating on personal

liberty and individual rights so common in the mouths of American citizens with foreign ideas, and of political demagogues for personal ends. It is remarkable and amazing that these classes of persons have had such influence as to secure large acquiescence in their claims, and such hesitancy in exposing their fallacies. It should be borne in mind that rules of law are founded on the same principle as a yard-stick, the bushel measure, and scales. It may be a great restraint sometimes on personal liberty and individual rights to give thirty-six inches for a yard, full measure for a bushel, twelve or sixteen ounces for a pound, or to regard the golden rule as a citizen, but the requirement and the obligation cannot yield to accommodate the ignorance, whim, or vice of the individual. The observance of these things is the pleasure of the honest man and the good citizen. The intelligent and the patriotic man will not be misled by false statements as to facts, nor fallacious arguments, nor expect good results from the application of false principles.

CHAPTER II.

Morality Is a Fundamental Principle In Civil Government.

I HAVE attempted to show in the former chapter that public necessity is law. If there were no necessity for law there would be no law. This is true both as to moral and civil law. The term, civil law, is used for convenience, intending thereby in this work to comprehend civil and criminal law under the same head. There is no place nor condition where moral law does not obtain, and there is no place nor condition where the duty is to civil law only. The greatest object and purpose of civil government under our civilization is to promote and enforce good morals in the transactions and relations of its citizens. In carrying out the necessities of government and working out the principles of public necessity, morality is made a fundamental principle. Upon this proposition I quote the constitutional provisions that have been adopted by many of the States of the United States.

In the Constitution of Indiana, 1851, Art. 8, Sec. 1, is as follows:

"Knowledge and learning generally diffused throughout the community being essential to the preservation of free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvements, and to provide by law for a general and uniform system of common schools, where tuition shall be without charge and equally open to all."

Arkansas. Art. 2, Sec. 25, Constitution 1874:

"Religion, morality, and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship."

California. Art. 9, Sec. 1, Constitution 1879:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, and agricultural improvements."

Connecticut. Art. 7, Sec. 1, Constitution 1818:

"It being the duty of all men to worship

the Supreme Being, the great Creator and Preserver of the universe, and their right to render that worship in the mode most consistent with the dictates of their consciences, no person shall by law be compelled to join or support," etc.

North Dakota. Art. 8, Sec. 147, Constitution 1869:

"A high degree of intelligence, patriotism, integrity, and morality on the part of every voter in a government by the people being necessary in order to secure the continuance of that government and the prosperity and happiness of the people, the Legislative Assembly shall make provision for the establishment and maintenance of a system of public schools which shall be opened to all children of the State of North Dakota, and free from sectarian control."

Sec. 149: "In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind."

Delaware. Art. 1, Sec. 1, Constitution 1831:

"Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe, and piety and morality, on which the prosperity of commu-

nities depends, are thereby promoted, yet no man shall or ought to be compelled to attend any religious worship, to contribute against his own free will and consent."

Florida. Sec. 5, Declaration of Rights, Constitution 1885:

"The free exercise and enjoyment of religious professions and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with, the peace or moral safety of the State or society."

Kansas. Art. 6, Sec. 2, Constitution 1859:

"The Legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvement, by establishing a uniform system of common schools, and schools of a higher grade, embracing normal, preparatory, collegiate, and university departments."

Maryland. Art. 43, Declaration of Rights 1867:

"That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicial system of general education, the promotion of literature, the arts, sciences, agriculture, commerce, and manu-

factures, and the general amelioration of the condition of the people."

Art. 30 provides that no person shall be molested on account of his religious profession, "unless under the color of religion he shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality."

Massachusetts. Art. 11 of the Amendments, Declaration of Rights:

"As the public worship of God and instruction in piety, religion, and morality promote the happiness and prosperity of a people and the security of a republican government, therefore the several religious societies of the commonwealth shall have the right to elect their pastors, contract with them for their support, raise money to erect and repair houses of worship," etc.

Art. 18, Declaration of Rights:

"A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the advantages of liberty and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles in the choice of their officers and representatives, and they have a right to require of their law givers and magistrates an exact and constant

observance of them in the formation and execution of the laws necessary for the administration of the commonwealth."

Chap. 5 of the Constitution, Sec. 2:

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country and among the different orders of the people, it shall be the duty of the Legislatures and magistrates to cherish the interests of literature and the sciences, . . . to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people."

Michigan. Art. 13, Sec. 11, Constitution 1850:

"The Legislature shall encourage the promotion of intellectual, scientific, and agricultural improvements. . . ."

Mississippi. Art. 8, Sec. 201, Constitution 1890:

"It shall be the duty of the Legislature to encourage by all suitable means the promotion of intellectual, scientific, moral, and agri-

cultural improvement, by establishing a uniform system of free public schools, by taxation or otherwise, for all children between the ages of five and twenty-one years, and as soon as practicable to establish schools of higher grade."

Missouri. Art. 11, Sec. 1, Constitution 1875:

"A general diffusion of knowledge and intelligence being essential to the preservation and the rights and liberties of the people, the General Assembly shall establish public schools."

Nebraska. Art. 1, Sec. 4, Constitution 1875:

"All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect," etc. "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

New Hampshire. Art. 6, Bill of Rights:

"As morality and piety rightly grounded on evangelical principles will give the best and greatest security to government, and will lay on the hearts of men the strongest obligations to due subjection, ... the people

of the State have a right to empower, and do hereby fully empower, the Legislature to authorize from time to time the several towns, parishes, bodies corporate, or religious societies within this State, to make adequate provision for the support and maintenance of public Protestant teachers of piety, religion, and morality."

North Carolina. Art. 1, Sec. 29:

"A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty."

Art. 9, Sec. 1:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and means of education should forever be encouraged."

Ohio. Art. 1, Sec. 7, Constitution 1851:

". . . Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

Rhode Island. Art. 12, Sec. 1, Constitution 1842:

"The diffusion of knowledge, as well as of virtue, among the people being essential to the preservation of their rights and liberties, it

shall be the duty of the General Assembly to promote public schools, and to adopt all means which they may deem to be necessary and proper to secure to the people the advantages and opportunities of education."

Tennessee. Art. 11, Sec. 12, Constitution 1870:

"Knowledge, learning, and virtue being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State being highly conducive to the promotion of this end, it shall be the duty of the General Assembly, in all future periods of this government, to cherish literature and science. . . ."

Vermont. Chap. 1, Art. 3, 1793:

". . . Nevertheless, every sect or denomination of Christians ought to observe the Sabbath or Lord's Day, and keep up some sort of religious worship, which to them shall seem the most agreeable to the revealed will of God."

Virginia. Art. 1, Sec. 17, Bill of Rights:

"That no free government nor the blessing of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, and virtue, and by a frequent recurrence to fundamental principles."

Sec. 18:

"That religion, or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence; and, therefore, all men are entitled to the free exercise of religion, according to the dictates of their consciences, and that it is the duty of all to practice Christian forbearance, love, and charity toward each other."

West Virginia. Art. 3, Sec. 20, Bill of Rights 1872:

"Free government and the blessings of liberty can be preserved to any people only by a firm adherance to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles."

Art. 12, Sec. 12:

"The Legislature shall foster and encourage moral, intellectual, scientific, and agricultural improvement, . . ."

In the States where neither morality nor education are specifically referred to in their constitutional provisions, these matters are nevertheless recognized by legislative acts and by decisions of their courts as fundamental. Kentucky has no constitutional specification as to morality, but morality is, nevertheless, in her fundamental law. I cite a case in Kentucky to this effect.

The Commonwealth vs. Douglas, 100 Ky. 116, affirmed 168 U. S. 488. I quote:

"When we consider that honesty, morality, religion, and education are the main pillars of the State, and for the protection and promotion of which government was instituted among men, it at once strikes the mind that the government, through its agencies, cannot throw off these trust duties by selling, bartering, or giving them away. The preservation of the trust is essential to the happiness and welfare of the beneficiaries, which the trustees have no power to sell or give away. If it be conceded that the State can give, sell, and barter any one of them, it follows that it can thus surrender its control of all, and convert the State into dens of bawdy houses, gambling shops, and other places of vice and demoralization, provided the grantees paid for the privileges, and thus deprive the State of its power to repeal the grants and all control of the subjects, as far as the grantees are concerned; and the trust duty of fostering and protecting the honesty, health, order, and good morals of the State would be cast to the winds, and vice and crime would triumph in their stead. Now, it seems to us that the essential principles of self-preservation forbid that the commonwealth should possess a pow-

er so revolting, because destructive of the main pillars of government. . . ."

The State of New York also has no specific provision in her Constitution upon the subject of morality, but in the case of Stanton vs. Allen, 5 Denio (New York Report), 434, the Court of Appeals in that State, said: ". . . . Sound morality is the corner stone of the social edifice—whatever disturbs that is condemned under the fundamental rule." These citations will be sufficient upon this matter, as I think there will be no controversy upon this subject. The United States Supreme Court, speaking by Chief Justice John Marshall, said: "The mere act of instituting a state government adopts, without reducing them to writing, those general, legal principles necessary to secure the safety and authority of the state as a body politic and to preserve its constituent members in safety, peace, health and morality, and these general unwritten, legal principles constitute the common law."

While Justinian the Great was Emperor of Rome, about A. D. 530, he called to his aid a number of men of the highest legal learning of his time, and undertook to compile and define the principles of law then recognized by his government. He did more than all other men in the history of that great empire for the es-

tablishment of sound legal principles. In describing the work he undertook and accomplished, he says:

"When, therefore, by the assistance of the same eminent person, Tribonian, and that of other illustrious and learned men, we had compiled the fifty books, called Digests or Pandects, in which is collected the whole ancient law, we directed that these institutions should be divided into four books, which might serve as the first elements of the whole science of law.

"In these books a brief exposition is given of the ancient laws, and of those also which, overshadowed by disuse, have been again brought to light by our imperial authority.

"These four books of institute thus compiled from all the institutes left us by the ancients, and chiefly from the commentaries of our Gaius, both from his institute and his journal, and also from many other commentaries, were presented to us by the three learned men we have above named. We read and examined them, and have accorded to them all the force of our constitutions.

"Receive, therefore, with eagerness, and study with cheerful diligence, these, our laws, and show yourself persons of such learning that you may conceive the flattering hope of yourselves being able, when your course of

legal study is completed, to govern our empire in the different portions that may be intrusted to your care."

Justinian's first definition is as follows: "Jurisprudence is the knowledge of things divine and human; the science of the just and the unjust."

In Paragraph 3, of Book I, he says: "The maxims of the law are these: to live honestly; to hurt no one; to give everyone his due."

His whole system of laws was founded upon these principles.

Blackstone, about one hundred and twenty-five years ago, undertook the great work, in imitation of Justinian, of compiling legal principles as recognized in the jurisprudence of England. In laying down the foundations of his work, using the terms "Law of Nature" and "Ethics" in the sense of moral law, he speaks as follows:

"This will of his Maker is called the law of nature. For as God, when he created matter and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man and endued him with free will to conduct himself in all parts of life, he laid down certain immutable laws of human nature whereby that free will is in some degrees regulated and restrained, and gave him also the

faculty of reason to discover the purport of those laws.

"Considering the Creator only as a being of infinite power, he was able, unquestionably, to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But, as he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice that existed in the natures of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the Creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others, are these principles: that we should live honestly, should hurt nobody, and should render to everyone his due; to which three general precepts Justinian has reduced the whole doctrine of law.

"But if the discovery of these first principles of the law of nature depended only upon the due exertion of right reason, and could not otherwise be obtained than by a chain of metaphysical disquisitions, mankind would have wanted some inducement to have quickened their inquiries, and the greater part of the world would have rested content in mental indolence and ignorance, its insep-

arable companion. As, therefore, the Creator, is a being, not only of infinite **power** and **wisdom,** but also of infinite **goodness,** he has been pleased so to contrive the constitution and frame of humanity that we should want no other prompter to inquire after and pursue the rule of right, but only our self-love, that universal principle of action; for he has so intimately connected, so inseparably interwoven, the laws of eternal justice with the happiness of each individual that the latter cannot be obtained but by observing the former; and if the former be punctually obeyed it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity he has not perplexed the law of nature with a multitude of abstract rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, 'that man should pursue his own true and substantial happiness.' This is the foundation of what we call ethics (morality), or natural law. For the several articles into which it is branched in our system amount to no more than demonstrating that this or that action tends to man's real happiness, and, therefore, very justly concluding that the performance of it as a part of the law of nature;

or, on the other hand, that this or that action is destructive of man's real happiness, and, therefore, that the law of nature forbids it."

"This law of nature, being coeval with mankind and dictated by God himself, is, of course, superior in obligation to any other. It is binding all over the globe, in all countries, and at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."

Chancellor Kent, the distinguished American commentator and law writer, begins his commentaries with the following statement:

"When the United States ceased to be a part of the British empire, and assumed the character of an independent nation, they became subject to that system of rules which reason, morality, and custom has established among the civilized nations of Europe. . . .

"We ought not, therefore, to separate the science of public law from that of ethics or morality, nor encourage the dangerous suggestion that governments are not so strictly bound by the obligations of truth, justice, and humanity in relation to other powers as they are in the management of their own local concerns. States, or bodies politic, are to be considered as moral persons having a public

will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carried with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life. The law of nations is a complex system composed of various ingredients. It consists of general principles of right and justice, equally suitable to the government of individuals in a state of natural equality and to the relation and conduct of nations; of a collection of usages, customs, and opinions the growth of civilization and commerce; and of a code of conventional or positive law. In the absence of these latter regulations the intercourse and conduct of nations are to be governed by principles fairly to be deduced from the rights and duties of nations and the nature of moral obligations; and we have the authority of lawyers of antiquity, and of some of the first masters in the modern schools of public law, for placing the moral obligations of nations and of individuals on similar grounds, and for considering individual and national morality as parts of one and the same science."

Sheldon Amos, M. A., Professor of Jurisprudence in the University College, London, Tutor to the Inner Temple of Jurisprudence Civil Law, and International Law, in a work

published in 1872, entitled Systematic View of the Science of Jurispudence, Vol. I, page 515, says:

"The purpose of the law is to fortify and to maintain public morality, and not to create and invent it; give solidity and permanence to the essential relationship on which national life depends, and not to be the formation of their vital energy; to secure for every man and woman for the creation of rights and duties a clear and open space for unrestricted action, within which they are free to develop all their faculties without hindrance or intrusion from without; and to uphold the security of such institutions as the voluntary efforts of mankind may devise or adopt, as seems to them best calculated to quicken or develop or invigorate the moral aspirations of the race."

Dr Francis Lieber was educated and received high cultivation in the schools of France. Among other works was his Manual of Political Ethics (morality), which he wrote and published in 1878. Chancellor Kent says, in approval of this work: "Dr. Francis Lieber, in his Manual of Political Ethics, has shown with great force, and by the most striking and apposite illustrations, the original connections between right and morality, and the reason and the necessity for

the application of the principles of ethics (morality) to the sciences of politics and administration of government. The work is excellent in its doctrines, and it is enriched with various and profound erudition."

Bishop, for thirty years recognized in the United States as a standard authority on criminal law, in his work on that subject says, Sec. 495: "Morality, religion, and education are the three main pillars of the State and the substance of all private good. A community from which they are banished represents more than the gloom of original chaos. There fore, they should be objects of primary regard by the law."

Also, Sec. 500: "But however uncertain may be the precise extent to which the common law protects Christianity, there is no question that it practically and fully cherishes the public morals. And it punishes as a crime every act which it deems sufficiently evil and direct, tending to impair the public morals."

The same author, in his works on contracts, enlarged edition, Sec. 505, says: "Prominent among the interests which the law protects are the public morals."

The legal authorities here cited upon this proposition are taken from the various periods of history reaching back to the begin-

ning of the Christian era, and also universally recognized as the leading authorities upon law and jurispudence. I might add a large number and quote volumes to the same effect, but for the purposes of this work must content myself with the support thus given to the proposition that morality is a fundamental principle of civil government. I hazard nothing by saying that no legal authority of respectable standing can be found to the contrary.

CHAPTER III.

What Is Morality?

THERE exists in the public mind and the legal profession uncertainty concerning the meaning of the word "morality," in civil law. There are very few attorneys, whatever may be the length of their experience or their standing in the profession, who would answer without hesitation or with confidence the question, What does the law mean by the word morality? It is most remarkable that a word so familiar, as old as the language, which is a translation of Latin and Greek terms, extending beyond the Christian era, a word which is used for the foundation stone of civil government, should convey so vague and uncertain an idea to the public mind. This familiar word evidently has some meaning, represents some great and indispensable principle, is of the greatest importance, or else it would not have been so long in use and been given such remarkable prominence in civil affairs. There is a very large and influential school of political teachers who insist that morality,

whatever it means, should not be connected in any way with politics or legislation, asserting that men cannot be made moral by legislation. On the other hand there is a very large and influential school which teaches that morality and religion are the same thing, who believe in the union of Church and State, and that politics and legislation should provide for and control matters of religion. It will not be controverted that civil governments must contemplate, as do these United States, the protection of liberty in religious belief, and encourage religious worship as they do education and other subjects for the purpose of good influence that come from these things. These civil governments, however, cannot define and favor, or control, or restrict, any special form of religious worship or belief. I am convinced that there is a general and prevailing uncertainty among the masses of people as to the distinction between matters of religion and morality. Out of this uncertainty comes a very dangerous sentiment creating the impression that as civil government cannot enforce matters of religion and forms of religious worship, it cannot enforce matters of morality and moral conduct.

Let me attempt to simplify from a legal standpoint the difference between religion and morality. Religion refers to the inner indi-

vidual life and belief. Religion requires that a man should love his neighbor as himself, but the civil law cannot compel him to do so, nor punish him if he does not. Morality requires a man to treat his neighbor honestly and fairly, and can compel him to do so, and punish him if he does not. Religion is a matter of belief; morality is a matter of conduct. The law does not interfere with matters of belief, but does undertake to control matter of conduct. The legal distinction between religion and morality is thus clearly presented without further discussion, so that no man need go astray. The words virtue, utility, ethics, and especially the latter, have been largely considered and made subjects of many books, and have occupied the time and attention of great minds. In recent years the word "altruism" has been suggestive as a theme for great attention and the expression of beautiful ideas. The science of sociology is attracting wide attention and consideration. There seems to be a general timidity and hesitation in the use of the word morality and the consideration of its scope and application. Upon careful consideration of all that has been written and said, and is being written and said, about this word and many words of like import, it will be seen that what is, in the main, contemplated and discussed under each and all of these

names is the simple, common, old-fashioned subject of morality, nothing more, but often something less. Why hunt for terms or words, why confuse counsel, why attempt to weaken the force of the good old word morality, by using vague, uncertain, feebler terms, that have never had, and never can have, a fixed and settled meaning? I come to plead for a fixed science, and no vagary.

Paley, in his work on Moral and Political Philosophy, written more than one hundred years ago, begins with the first sentence as follows: "Moral philosophy, morality, ethics, and natural law mean all the same thing; that science which teaches men their duty and the reason of it."

I have gone through many volumes written upon the subjects just referred to, seeking for a concise definition of morality, or the definition of its synonyms. I find these writers admitting great difficulty in giving a definition. I find them analyzing the word, considering its component elements, and devoting much time to each of these, taking the word to pieces, and spending much time in defining, specifying, and explaining the nature and office of the pieces, and I must admit great disappointment in finding that they fail to put the pieces back together, and tell us what the structure is. They give the component parts,

but not the composition. If morality is a foundation stone or a pillar in the construction of the State, we certainly can lay our hands upon that corner stone or upon that pillar. The more books that have appeared upon this subject, the greater the uncertainty in the public mind. If there is such a thing as morality, we must be able to know what it is. If it cannot be defined, it cannot be understood; if it has no standard, it is not practical; if it cannot be identified, it is a myth. Theologians confuse it with religion, and lose sight of it in its civil character. Philosophers and metaphysicians tear it to pieces and fatigue the life out of it, and often leave it so disfigured that its best friends cannot recognize it. We common people of average intelligence want, and must have, some definition, concise, in plain English language, of this great subject that we can understand. We common people must have erected in our midst a standard to which we may look and live, while we and our families are being bitten by these fiery serpents that are everywhere in society. It seems to me in this great emergency we must look to the civil law for information and relief. In fact that is the source from which the information should and must come, when we seek the civil and legal standard of morality. Let it be borne in mind that morality is not

religion. It has sometimes been said that men make their morality their religion, and expect to be saved by it. In such a case morality becomes religion to the individual, and in it and by it he performs his acts of worship of some supreme being. Whether he can be saved thereby is no part of the subject I am now considering. Morality is for this life only. Morality is purely a civil condition; refers to the citizen, to the individual in his relations to other people and society.

I propound the hard question, if it is so understood, for the purpose of answering the same, without evasion or equivocation—What is meant in Law by the word "Morality?"

In the case of Lyon vs. Mitchell, 36th. N. Y., 235, the Court of Appeals, in a decision on a question properly before it, said: "'Morality is the rule which teaches us to live soberly and honestly. It hath four chief virtues—justice, prudence, temperance, and fortitude.'

"The morals of the time may be vicious; public sentiment may be depraved; the people may have gone astray so that not one good man can be found. Sound morals, as taught by the wise men of antiquity, as confirmed by the precepts of the Gospel, and as explained by Paley and Horne, are unchanged. They are the same yesterday and today."

This decision has been cited with approval

in New York a number of times and in subsequent decisions, and has never been criticised or rejected by the Supreme Court of any State, so far as I have been able to find.

In the American and English Encyclopedia of Law, Vol. XV, page 716, this defiinition of morality is quoted in the text as settled law, and this case is cited.

In Leiber on Penal Law, 2nd Lieber's Miscellaneous Works, 471, the author says: "At common law, indictability and immorality are convertible terms."

In Wharton's Criminal Law, Vol. 1, sec. 140, the author quotes the foregoing expression from Leiber, and modifies slightly the claim of Lieber by saying, "There are some immoral acts which are not indictable, and some indictable acts which are not immoral;" but he says: "If we were required to supply a further test, we might say that public policy demands the indictability of all immoral acts of which punishment by law is the proper retribution."

In Wells' Pollock on Torts, American Edition, 1894, page 12, the author gives as the subject of a paragraph, "Relation of the Law of Torts to the semiethical precept, 'Alterum non laedere' ('Thou shalt do no harm to thy neighbor')."

Discussing this subject, he says: "We have then three main divisions of the law of torts.

In one of them, which may be said to have a quasi criminal character, there is a very strong ethical, moral element. In another no such element is apparent. In the third such an element is present, though less, and manifestly so. Can we find any category of human duties that will approximately cover them all, and bring them into relation with any single principle? Let us turn to one of the best known sentences in the introductory chapter of the Institutes copied from a lost work of Ulpian: 'Juris percepta sunt haec; honeste vivere alterum non laedere, suum cuique tribuere'— 'The maxims of the law are these: Thou shalt live honestly. Thou shalt do no hurt to thy neighbor. Thou shalt give everyone his due' ('Honeste vivere'). 'Thou shalt live honestly' is a vague phrase enough. It may mean refraining from criminal offenses, or possibly good behavior in social and family relations ('suum cuique tribuere') 'Thou shalt give everyone his due' seems to fit pretty well with the law of property and contract. And what of 'alterum non laedere?' ('thou shalt do no hurt to thy neighbor.') Our law of torts, with all its irregularities, has for its main purpose nothing less than the development of this precept. This exhibits it, no doubt, as the technical working out of a moral idea by a positive law, rather than the systematic application of

any distinctly legal conception. But all positive law must presuppose a moral standpoint, and at times more or less openly refer to it, and the more so in proportion as it has, or approaches to having, a penal character."

In Law of Torts, by Piggott, page 208, on the subject of frauds, he says: "It will be noticed that we have ignored the distinction between legal and moral fraud sometimes drawn. 'I am of the opinion,' said Bromwell, L. J., in Weir vs. Bell (3 ex. D., 243), 'that to make a man liable for fraud, moral fraud must be proved against him. I do not understand legal fraud. To my mind, it has not more meaning than legal heat or legal cold, legal light or legal shade. There never can be a well-founded complaint of legal fraud, or of anything else, except where some duty is shown, and correlative right and some violation of that duty and right. . . .' In truth we are discussing the legal aspect of a moral question, and, as we have seen, the common law does practically adopt the same standard as morality. The apparent exception to which 'legal fraud' is sometimes attached is the liability of the principal for the fraud of his agent; but this may be rested on another moral ground. His claim to take advantage of his agent's fraud is in itself a moral fraud."

Sheldon Amos, M. A., Professor of Juris-

prudence in University of London, very high authority on any subject which he touches, from whom I have hereinbefore quoted, in a book entitled A Systematic View of the Science of Jurisprudence, on page 516 says:

"There exists somewhere a true and common canon, or standard of action, inflexible in itself, and yet withal admitting of an easy adjustment and the most exquisite modulations for all members of society, which the more habitually each member adopts, the vaster is the expansion of which his own nature is capable, and the less is the chance of the need of interruption to others; and which the more habitually all men adopt, the more freely and harmoniously the general machinery of social intercourse works. This canon or standard of action is hard, indeed, to discover, and particular societies may spend long ages in unavailing efforts to discover it. . . .

This canon or standard of actiong, including here under the term action all the thoughts and feelings that give it life and warmth, **is absolute morality.** It is only the visible image of the mechanical scaffolding of this that is designated by the phrase, 'National law.'"

When the law by its expansion and its nearer approach to the image of absolute morality becomes, as the author says, "a mode of benevolent guidance and aid," then, as he

continues, "it characteristically stands forth as the ever present and incarnate witness of that **ultimate morality** of which it is, at best, no more than the symbol and the counterpart."

This distinguished author closes his work as follows:

"It is not then in law nor in government that hope must be placed for the direct culture of a nation's vitality. It is in moral and spiritual efforts, whether expressed in salutary and silent influences or in highly systemized organizations. . . . In a word, it is to these direct inspirers of human virtue and energy that law itself must turn in order to find at hand a race of citizens whose dearest concern will be to obey, to cherish, and to reform it."

There seems to be a general impression abroad that the word "morality" is a general term like the words "cattle" and "horses," and that it includes many different varieties. Under this false idea morality, as applied to the ministers of the Gospel, is one thing; to the teacher, another thing; to the attorney, another thing; to the business man, another thing; and to the applicant for license to sell intoxicating liquors, it is **anything** for his especial benefit. It is high time for earnest teaching to correct these errors in the public mind. Morality is like truth; it has no varieties. It is the same thing in every place and

relation; whether it appears in the pulpit, in the business transaction, in the court of justice, in the home, or in political affairs. It is one thing that cannot be adjusted to accommodate the necessities of any man or any business. In the language of the highest court in the State of New York, heretofore quoted, but which I repeat because of the great value there is in the expression, "**Sound morals, as taught by the wise men of antiquity, as confirmed by the precepts of the Gospel, and as explained by Paley and Horne, are unchanged. They are the same yesterday and today.**"

Let it be fully understood that in legal contemplation, thoroughly settled, **Christian Morality, Statutory Morality, Constitutional Morality, Common Law Morality, Common Sense Morality,** and **Morality are all the same thing.** Whenever, wherever, and in whatever connection the word "morality" is used, it means **morality.** If ever used in any other sense, it is improperly used. Simplifying the legal standard, it may be easily understood that the law considers questions of morality as governed by the golden rule.

There is not any standard of religious creed. A man may profess any kind of religious belief that is not immoral and does not violate any civil law.

Mormonism was only unlawful so far as it

was immoral, and its immorality consisted in recognizing the plurality of wives.

There is a legal standard of morality up to which every man must come, and the standard is the same in every State. This is fixed and required, like standards of weights and measurements. The standards of weights and measurements might be changed, but the standard of morality cannot be. It has been settled and fixed as the work of all the learning, wisdom, and experience of the past, in fact, by a super-natural influence, and cannot be changed.

Civil government, applying this standard to business affairs, will compel full measurement, full weight, full count, and that the goods come up to the sample. This is absolutely necessary to promote and protect business affairs.

If civil government were to give its whole attention to the cultivation of the youth in high integrity in business affairs only, and the punishment of offenses against the rules of morality in this regard only, how long could it hold together? The social affairs of her citizens are of the most importance to the government, and are not to be neglected.

A young man from a farm not many years ago presented himself to the president of the Indiana State University, and said he had de-

termined to become a public speaker, and had come to study grammar. The president asked him what else he desired to study. He said, "Nothing else." The president said, "We cannot teach you grammar by itself. You must take other studies with it." The young man said, "Why, is not grammar in a book by itself?" The president said, "Did you ever try on the farm at home to fatten only one quarter of a beef at a time?" He answered, "No; you cannot fatten a beef at all, unless you fatten it all together." The president said, "So you must fit yourself all together if you expect to meet your ambition."

The government can only be safe when her citizens are developed and regulated by the moral standard as applied alike to business, educational, and social affairs. The leaders in strikes and mobs, who block and terrorize business, disregard morality in social affairs, and do not believe that morality exists in business affairs, are products of false teachings on morality in civil affairs.

It is more important to the government that a citizen should be moral than that he should be religious, but religion is the greatest teacher upon the subject of morality. This is the reason why the law encourages religion and religious worship.

It has been held in various States, especially

in Pennsylvania by her Supreme Court, that the Christian religion is a part of the law of the land, and that the system of morality as represented and defined by the Christian religion is the standard of morality in this nation.

Paley combined, in one treatise, moral and political philosophy. He laid down the rigid rules of morality as they were in his day, and had been from time immemorial, and ever must be. Yet he has been charged by high authority with attempting to modify them a little to accommodate aristocratic influences.

When the word "morality" was used in the Constitution of Indiana in 1851, and made the first and most important subject upon which the Legislature is commanded to act, it must be presumed that it was so used in contemplation of its history and full meaning, not only as understood in 1851, but also as its fullness and meaning shall appear in 1951, and always.

It will be seen that the present constitution of Indiana, adopted in 1851, took the word "moral" out of its former position in relation to other subjects and gave it the first, chief and most prominent place in the present constitution. It now stands ahead of education and all other subjects in its importance and demand upon the legislature, according to the requirements of the constitution. This word

is not a general term to cover different codes, theories or standards of morality, for that would have been using a meaningless term.

The constitution clearly contemplates a standard, and only one standard, one system and one code of morality. What standard? What system? What code? This section of the constitution used the words "education," "science" and "agriculture." The legislature and the public have had little trouble in understanding and dealing with these subjects. The legislature has made provision for promoting these by large means, by careful and competent instruction and the suppression of all antagonistic influence. The constitution meant, evidently, by the word "education" the best system, the best standard and the most perfect instruction known to persons of the highest training and education; and the words "science" and "agriculture," the most perfect theory and system known to the most scientific and experienced men, and men of the highest culture, respectively, upon these subjects. And the constitution, by the word "moral," contemplated the most perfect theory and system and code of morals known to the people of the highest culture and training upon this subject. Education can only be promoted by teaching truth and removing error. Science and agriculture can only be

promoted by teaching the truth upon these subjects and correcting errors in regard to the same. And it is evidently contemplated that, as knowledge upon these subjects and practical experience should increase, the legal dealing with these subjects should keep pace with the growth of public intelligence and culture.

If the legislature were to provide for authorizing or protecting any theory or system that was found to be erroneous, antagonistic and disastrous to education, science or agriculture, and promotive of serious and dangerous errors upon either of these subjects, there can be no question that such legislation would be void.

This method of interpretation can be applied to this question with ease, and the question cannot be properly determined by any other method. Let us trace this word by its history and use, to ascertain what is meant by it in the Indiana constitution.

The saying is quite common that morality has no place in politics nor legislation; that people cannot be made moral by law. There can be no excuse, and toleration ought not to be given to such misinformation in Indiana at this day. It is a humiliating illustration of the prevalence of vicious influences. The truth is, that morality must be given the first and chief consideration in legislation and in

judicial proceedings, and it lays its imperious hand on the private citizen, legislator, chief executor and the courts.

What is said here concerning the constitution of Indiana, applies to the constitution of all the states, whether morality is specifically referred to or not.

It is my purpose to aid in correcting the impression that there are different kinds and standards of morality.

There is only one kind and only one standard of morality.

This is true in every state and by the laws of the United States.

Then, when we speak of moral law and civil law, we mean parts of the same thing.

Using commonplace terms, morality and moral character is each made of the following elements in equal parts:

1. Fair dealing in business and social life.
2. The exertion of a good influence in all relations; and,
3. Faithful obedience to the law.

Every man knows either one of these elements when he sees it, or hears it, or feels it. Every man, I mean every man who knows enough to exercise the privileges of citizenship in any form, in fact, knows full well what morality and moral character are in every other form except in legal contemplation. My pur-

pose is to make clear and to emphasize the most important fact, that morality and moral character are exactly the same in legal contemplation as they are when viewed from any other established standpoint.

CHAPTER IV.

What Is Immorality?

IT may seem unnecessary to ask such a question. It may seem that this is a foolish question. However, my observation leads me to believe that there is a very great uncertainty in the public mind upon this subject, especially as to the legal comprehension of the word "immorality." Let it be kept in mind that I am considering every matter in this work from a legal standpoint only. I use Indiana as an illustration of what is true of every State in this government. I must depend upon illustrations from this State, because to follow the subject as it has run through all the States is unnecessary for the purpose of this work. The illustrations used can be pursued by the citizens of any State, and would be found to apply as forcibly in any other State as in Indiana.

The Legislature in Indiana has passed laws defining offenses, every one of which any candid person will admit is, independent of civil laws, and immoral act. Those offenses

which are essentially wrong and immoral, though some are made so, only because they interfere with the rights of others and are forbidden as a public necessity in Indiana, and the same in other States. For the purpose of showing the extent to which the Indiana Legislature has gone in its attempt to protect society and compel the observations of moral conduct and public welfare, I quote the subjects of many criminal statutes in Indiana. This may seem at first impression a waste of time and space. I think, however, careful consideration will find this long list of criminal offenses a surprise and interesting to show what legislators feel compelled to do to promote morality and fair dealing among the people by an effort to suppress immorality. I give the name of the subjects that are described as criminal offenses in Indiana which are substantially the same in the other states:

Abandonment of wife or child.
Abduction for prostitution.
Abortion, attempting.
    soliciting medicine for.
Acid, throwing on person.
Acknowledgement, false certificate,
    not explaining instrument,
    signing blank.

Adulteration of foods and drugs,
of candy,
of vinegar,
milk adulterating,
formaldehyde, use of,
animal foods,
wines, adulterating,
liquors, adulterating.
Adultery, penalty.
Advertisement, defacing legal,
posting illegally,
publishing illegal.
Affidavit, false attestation.
Affray, penalty.
Agent, illegal insurance company.
Agricultural fair, trading near.
Aiding hostile army.
Aid to officer, refusing.
Amalgamation, penalty,
counseling, penalty.
Animals, altering brands on,
malicious injury to,
dogs, stealing,
dead, nuisance by,
selling deceased,
food for, adulteration,
cruelty to,
definition of,
keeping for fighting,
cruelly carrying,

railroads carrying,
glandered horse at large,
sheep, deceased at large,
deceased, transportation,
damages, liability for,
Spanish or Texas fever, transporting,
Hog carcass, transporting,
selling deceased, false representation,
search warrants,
duty of officers.
Arms of State, sale, secreting,
furnishing to minors.
Army, aiding hostile.
Arson, definition, punishment,
murder in.
Assault, definition, punishment,
with felonious intent.
Assault and Battery, acid,
throwing on person.
Assault and Battery, felonious intent,
definition, punishment.
Assignation, houses of,
enticing female to.
Attacking public conveyance.
Auditor of State, illegal warrant,
not accounting.
Badges, unlawful use,
of secret societies.
Bank, deposits after insolvency,
overdraft by officer,

loans to bank officers,
check on to defraud,
selling notes of broken,
Barber shops, closing on Sunday,
Barrator, common.
Baseball or games on Sunday,
Betting, pool selling.
Bigamy, penalty,
proof, of marriage, venue.
Bills, posting unlawfully.
Billiards, minors playing.
Birds, wild, protection.
Blackmailing.
Blasphemy, penalty.
Boats, landing family.
signals on at night.
Books, library, defacing.
Brands on animals, altering,
false on packages,
altering inspectors.
Branding packages falsely.
Brant, killing, penalty.
Bribery, public officers,
of jurors and others,
carriers soliciting bribes,
of employes of carriers.
Bridges, injuring,
drawbridges.
Buildings, fire-escapes, neglect.
Bunko-steering, penalty.

Burglary, definition, penalty,
entering house feloniously,
second conviction, penalty.
Burning prairies, woods.
Camp-meeting, trading near.
Canada thistle, allowing to grow,
complaints, proceedings,
grain, sale of.
Canal, obstructing, injuring.
opening locks,
banks, driving on.
Candy, adulteration.
Carriers soliciting bribes,
bribing employes of.
Carrying weapons,
game out of state,
Cars, getting on moving.
Cemeteries, defacing tombstones,
Check, bank, defrauding by.
Child stealing,
substituting,
abandonment of,
support, failure.
Children, overworking,
employing under fourteen,
cruelty to,
deserting, neglecting,
disposing for unlawful purpose,
begging, using for,
dance-house, exhibition in,

underground work, hiring,
affidavit, arrest,
support, failure,
delinquent, encouraging,
tobacco, sale or furnishing to.
Cigarettes, furnishing to minors,
manufacture, sale, gift.
City, breaking quorum of council,
running horses in,
contracts, interest of officers in.
Claim on county, officer discounting,
township trustee not paying,
false presenting.
Clerk, printing bureau, misfeasance.
Coal, short measure, sale.
Coin, counterfeiting, uttering,
apparatus for making.
Common barrator.
Compounding felony,
misdemeanor,
prosecutions.
Concealing stolen goods,
wills,
criminals.
Conspiracy to commit felony.
Constable purchasing judgment.
Contracts, interest of officers.
Contributions, political, insurance companies.
Conveyance, public, attacking.
injuring persons.

Convict, escape of.
Corpse, opening grave of,
removal unlawfully,
concealment, aiding,
buying of.
Corrupting jurors, officer.
Counterfeiting coin.
uttering coin,
instruments, uttering,
possession of coin or instruments,
registered label,
label, sale of goods,
private label,
die for label,
buying or selling label,
goods, sale, counterfeit label,
die, possession, sale,
apparatus, possession,
stamps, sale of goods.
Cranberries, gathering on public lands.
Credit, false statement,
creditors, defrauding.
Crops, carrying off,
lien on, sale, notice.
Cruelty to animals,
definition of,
cruelly carrying animals.
Dams, injuring.
Dance halls, liquors, minors.
Dead, opening grave of,

removal of unlawfully,
concealing corpse,
buying corpse.
Dead animals, nuisance,
hogs, transporting.
Deeds, false acknowledgement,
not explaining,
certificate, signing blank.
Deer, killing, penalty.
Defacing records.
Defrauding creditors.
Delinquent children encouraging.
Deserting wife or child.
Detainer, forcible.
Distributing drug samples,
deleterious matter,
definitions.
Disturbing meetings.
Divorces, promoting,
from bed and board, cohabiting.
Dogs, larceny of.
Doors, outswinging.
Doves, killing, penalty.
Drains, injuring,
obstructing,
diverting water.
Drawbridge, lights on,
over streams, regulations.
Druggist, sale of liquors,
poisons, sale of,

prescription to sell poison.
Drugs for females, advertising,
adulteration of,
distributing samples.
Drunk in public place,
officer during business hours.
Drunkards, sale of liquors to.
Duel, challenge to,
fighting of.
Ducks, wild, protection.
Dynamite, killing fish,
manufacture, use,
place of making, precautions,
sale, restrictions,
unlawful use of,
exploding, restrictions,
penalty.
Elections, betting on,
buying votes,
sale of votes,
witnesses, competency,
release of liabilty,
repeal of statutes,
reward for conviction,
limitation of actions,
illegal voting,
importing voters,
voting too often,
non-resident voters,
bribery for nomination,

bribing voters,
challenge, false affidavit,
breaking open ballot box,
altering or destroying returns,
fraud by officers,
altering returns.
Elections, refusing to receive vote,
influencing voter,
opening or marking ticket,
deceiving illiterate voter,
defrauding voter,
threatening voter,
seizing ballot box,
destroying ballots or boxes,
petition, resigning, inducing,
selling signature to petition,
fraud at special election,
buying votes at special election,
bribing to procure election.
Electric appliances, injury to.
Embezzlement of public funds,
by officers,
accounting by officers,
by employes,
attorneys and collectors,
railroad employes,
carriers, innkeepers,
by bailees,
by tenants,
treasurers, state, county, city,

city and town officers,
by fiduciaries,
bankers and brokers,
Employes, seats for female,
contributions from railroad,
discharging unlawfully.
Entering house to commit felony,
Escape of criminals,
aiding escape,
convict escaping,
Estray law, violating.
Examination questions, sale of.
Explosives to kill fish,
dynamite, manufacture, use,
opening, explosives,
charging, tamping, penalty.
Extortion by officer,
from pensioner.
Fair grounds, gaming on.
False claim, presenting,
certifying,
false personation,
heir, producing.
False pretense, definition, penalty,
statement, credit,
check, defrauding by,
Family boats, landing,
occupants removing articles.
Faro-bank, keeping of.
Felony, compounding of.

Females, enticing for prostitution,
drugs for, advertising,
prostitution by.
Females, enticing to immoral place,
obscene language before,
employes, seats for.
Ferry, neglect of duties,
excessive charge.
Fire escapes, failure to provide.
Fires, crimes by.
Fish, protection of,
seines, traps, spears, possession,
destruction of,
trap prohibited,
fishing season, lakes,
ice on streams, catching fish,
on lakes, catching fish,
shooting fish,
trot lines,
catching fish regulated,
size of fish caught,
number of fish caught,
obstructing streams,
nets near Ohio river,
polluting streams,
poisoning fish,
explosives prohibited,
private ponds protected,
trespassing on land,
commissioner, fee, prosecutions.

Fish commissioner, prosecutions, fee.
Flag, United States, desecration,
standard defined,
acts permitted by U. S.,
penalty imposed.
Foods, selling unwholesome,
adulteration of,
animal foods, adulteration.
Forcible entry and detainer.
Forgery, definition, penalty.
Formaldehyde, use in foods.
Fornication, penalty.
Fraud on creditors,
to obtain insurance.
Fraudulent claims,
check,
Fruit, unlawful taking.
Fruit trees, false representation.
Gambler, common.
Game, protection of,
birds, game defined,
wild, killing,
brant, killing, penalty,
carrying game out of state,
deer, killing, penalty,
doves, killing, penalty,
ducks, wild, killing number,
permit to hunt,
geese, wild, killing, penalty.
Game, grouse, killing, penalty,

hunting season,
injuries to property,
license to hunt,
non-resident's, fee,
permits to hunt,
pheasants, killing, penalty,
imported, killing, penalty,
prairie chickens, killing,
quails, protection of,
squirrels, hunting,
turkeys, wild, killing, penalty,
water fowls, permit to hunt,
woodcock, sale of.
Games, allowing minors to play,
Sunday, when illegal.
Gaming on Fair Grounds,
inducing minor to game,
betting on game or wager,
election, betting on,
pool selling,
keeping pool-selling room,
keeping gaming devices,
allowing minors to play.
Gaming house, keeping, renting,
visiting, frequenting.
Garnishment, oppressive,
transfer of claim.
Gas-meter, false,
open for inspection,
connections, altering,

making unlawful,
mixers, refusal to deliver,
fire, setting gas on,
penalties,
waste of natural gas,
jumbo burners,
penalties,
charges, excessive prohibited,
penalties.
Geese, wild, protection.
General Assembly, breaking quorum.
Gift enterprise.
Goods, mortgaged, removal.
Grain inspector, misconduct.
Grand larceny.
Grave, disturbing of,
removing unlawfully.
Grouse, protection of.
Habeas corpus, obstructing.
Hand-car, using unlawfully.
Health, offenses against.
Heir, producing false.
Highway, injuring trees on,
obstructing,
cars, obstructing with,
traction engine, using,
heavy hauling on,
friction locks on wagons,
corporations obstructing,
repairs, neglect.

Highway, rubbish throwing in,
horse racing on,
vehicles, leaving in.
Hog, transporting dead.
Horse, glandered at large,
racing on highway,
running in city or town.
House-breaking.
House of assignation, keeping,
of ill fame, enticing to,
keeping of.
Hunting season,
license and permits,
on Sunday.
Husband, deserting family,
ill fame, house of keeping,
enticing to,
frequenting.
Imbecile, intercourse with,
Incest, definition, penalty.
Indecency, public.
Insane, intercourse with.
Inspector of grain, misconduct,
altering marks of.
Insurance, illegal loans,
fraud on underwriter,
fraudulent advertising,
advertising illegal company,
political contributions.
Intoxication in public place,

of officer.
Jail, keeping unclean.
Judge practicing law.
Judgment, officers buying.
Jurors, influencing,
bribing.
Justice, purchasing judgment,
blanks, signing of,
Kidnapping,
for ransom.
Labels, counterfeiting.
Laborers, children, overwork,
discharging unlawfully.
Lakes, fishing in,
ice on, fishing.
Landlord, lien on crops, sale, notice.
Landmark, removing, altering, lands.
trespass on,
entry on state,
trespass on public,
cranberries, gathering public.
Larceny, grand,
petit,
dog, stealing,
goods from other states,
public records.
Law, judge practicing,
county officer practicing.
Legal process, obstructing,
notices, removal, defacing,

disobeying process.
Libel, criminal.
Library, defacing books.
License to hunt,
failure to obtain license.
Lien on crops, sale, notice.
Liquors, adulterating,
sale of poisonous,
sale of intoxicated person,
drunkard, sale to,
minors, sales to,
misrepresenting age,
dance halls, minors, sales,
furnishing to prisoners,
keeping disorderly place,
Sundays, holidays, sales on,
druggists, sales by,
camp-meetings, picnics, sales near,
soldiers' home, saloon near.
Loan companies, illegal loans.
Loaning funds illegally.
Locks on wagons.
Lotteries, selling tickets,
advertising.
Lynching mob, definition,
accessory after fact,
prosecution for,
removal of sheriff,
aid for sheriff,
military force called.

Malicious trespass,
injury to animals,
prosecution.
Manslaughter.
Marriage, performing unlawfully,
of whites and negroes,
certificate, return of,
marks, altering inspectors',
mayhem, malicious, cimple,
medicine, prescribing when drunk,
prescribing secret,
samples, distributing.
Meetings, public, disturbing.
Memorial day, sale of liquors.
Stipped milk, adulteration.
Military expedition, aiding,
privateering, penalty,
force to aid sheriff.
Minors, furnishing weapons to,
inducing to gamble,
allowing to game,
billiard rooms, allowing in,
tobacco, furnishing to,
cigarettes, furnishing to,
liquors, sale or gift to,
misrepresenting age,
dance halls, congregating at,
weapons, furnishing or sale to.
Miscarriage, attempting,
soliciting medicine for.

Misdemeanor, compounding,
Misprison of treason.
Mobs, lynching.
Morphine, sale without prescription.
Mortgage, false acknowledgment,
on goods, removal.
Murder, first degree,
second degree.
Navigable streams, obstructing,
drawbridge, regulations.
Negroes marrying whites.
Notary public, officer acting as,
oath, false attestation,
acknowledgement, false certificate,
not explaining instrument,
acting after term expires.
Notices, legal, removal, defacing,
posting on buildings.
Nuisance, public,
definition of,
stagnant water,
dead animals, offensive matter.
Obscene publications,
possession, sending,
publication, sale,
language before females.
Obstructing legal process,
Office, usurpation,
keeping at wrong place.
Officer, extortion by,

judge practicing law,
county officer practicing law,
acting as notary,
oath, false attestation,
acknowledgement, false certificate,
not explaining instrument,
acting after term expires,
purchasing judgment,
negligence by officers,
refusing aid to,
acting without qualifying,
intoxication during office hours,
office kept at wrong place,
discounting claim on county,
interest in public contracts,
township trustee, paying claims,
Bribing officers,
auditor, state, illegal warrant,
state not accounting,
false reports by,
state treasury, obstructing examination,
treasurer, state, not accounting,
false reports by,
payments illegally,
false vouchers by,
defalcation by,
Officers, highways, neglect,
recorder, recording deed without transfer.
clerk printing bureau, misfeasance,
grain inspector, misfeasance,

teacher, sale of questions,
peace officers' residence,
blank forms, signing of,
official negligence.
Ohio river, fish nets in stream near,
fishing in,
Oleomargarine, sale of.
Opium, sale without prescription.
Papers, pictures, obscene.
Peace officers, residence.
Pensioner, extortion from.
Perjury, false testimony,
voluntary affidavit,
subornation of.
Personation, false.
Petit larceny.
Pheasants, protection of.
Physician, prescribing when drunk,
giving secret medicine.
Picnics, trading near.
Pictures, papers, obscene.
Poison, administering feloniously,
liquors, sale of,
sale by druggist,
sale without prescription, 2495.
Poisoning springs, waters,
animals,
fish.
Polluting streams, injuring fish.
Pool-selling, penalty.

Poor, cruelty to.
Posting bills on buildings.
Powder, opening and use.
Prairie chickens, protection.
Prairies, burining.
Printing bureau, clerk, misfeasance.
Prison, keeping unclean,
    dealing with inmates,
    slops from, sale.
Prisoners, furnishing liquors,
    escape, aiding,
    convict escaping,
    dealing with.
Privateering, penalty.
Prize-fighting.
Process, disobeying.
Profanity, penalty.
Prostitute, associating.
Prostitution, penalty,
    enticing females for.
Provisions, unwholesome, sale,
    oleomargarine, sale of.
Provacation, penalty.
Public indecency.
Public records, larceny,
    defacing, destroying,
    forgery of.

Public Offenses Declared by Indiana Legislature in 1909.

Arrest, magistrate's docket, amendment.
Billies, exposing for sale.
Camping on or along highways.
Game, see.
Knucks, exposing for sale.
Novels, paper, exposing for sale.
Order of trial, amendment.
Paper novels, exposing for sale.
Public accounting, see.
Requisition for fugitive, amendment,
    expenses of agent.
Robbery, amendment,
    assault with intent to rob,
    third offense, penalty.
Sabbath breaking, amendment,
    baseball.
Slung shot, exposing for sale.

Quail, protection of.
Quorum, breaking city,
    breaking in legislature.
Racing horses, on highways,
    in city or town.
Raffling, penalty.
Railroads, obstructing tracks,
    carrying animals,

game, carrying illegally,
Canada thistle, cutting of,
cars, getting on moving,
highway, obstructing with cars,
passenger car, tools,
locking of,
crossing duties,
signals at crossings,
employes, hours of service,
contributions from,
discharge of.
Ransom, kidnapping for.
Rape, definition, punishment,
murder, committed by,
intercourse with insane person.
Receiving stolen goods,
goods from other states.
Records, larceny of,
defacing, destroying.
Recording deed before transfer.
Removing mortgaged goods.
Riot, penalty.
Riotous conspiracy.
Roads, neglect of.
Robbery, definition, penalty,
murder committed in.
Rout, penalty.
Sabbath, breaking.
barber shops closing,
baseball or games on,

hunting on,
liquors, sale on.
School teacher, examination questions.
Seduction, penalty.
Seines, catching fish,
destruction of,
Ohio river, stretching near.
Shade trees, injuring.
Sheep, deceased at large.
Shooting in towns and cities,
at public conveyance.
Sidewalks, riding or driving on.
Signals on vessels.
Slops from prison, sale.
Sodomy, penalty.
Soldiers' picnics, trading near,
liquor saloon near.
Springs, poisoning.
Stallion, letting in public.
State, crimes against sovereignty,
lands, entering on,
cranberries on, gathering,
arms, sale of,
officers, not accounting,
library, defacing books.
Stolen goods, receiving,
from other states.
Streams, polluting,
obstructing navigable.
Subpoena, disobeying.

Sunday, desecrating,
baseball or games on,
barber shops, closing,
hunting on,
liquors, sale on.
Supervision, repairing highways,
Canada thistles, cutting,
complaint, proceedings.
Taxation, giving false list.
Teachers' questions, sale of.
Telegraph or telephone, disclosing message,
injuring lines.
Texas cattle, diseased, bringing into State.
Tobacco, furnishing to minors,
cigarettes, sale or gift to minors,
sale or manufacture of cigarettes.
Toll-bridge, injuring,
gate, injuring,
charging excessive.
Tombstones, defacing, removal.
Town, running horses in,
shooting in.
Toy pistol, manufacture, sale.
Township trustee, refusal to pay claim.
Tow-path, driving on.
Trading near camp-meeting, fairs, picnics,
with prisoners.
Tramps, penalty.
Traps, fishing, penalty,
destruction of.

Treason, definition, punishment,
misprison of,
Treasurer of state not accounting,
false report by,
illegal payments,
false vouchers,
payment refused,
of county, keeping office.
Treasury, preventing examination.
Trees, injuring,
on highway, injuring.
Trespass upon lands,
malicious,
on public grounds.
Trust companies, illegal loans.
Trustee, township, paying claim.
Turkeys, wild, protection.
United States flag, desecrating.
Usurping office.
Vagrancy, penalty.
Vehicles in highways,
friction locks on.
Vessels, landing without right,
signals at night.
Vinegar, adulterating.
Vines, injuring.
Vote, buying or selling,
selling vote.
Waters, poisoning,
befouling,

stagnant, creating.
Wagons, friction locks on.
Water fowls, hunting.
Weapons, drawing.
threatening to use,
carrying concealed,
furnishing to minors,
toy pistols, sale,
pointing, aiming.
Weights, using short,
coal, measure or weight,
gas meter, false,
false weights or labels,
altering inspectors' marks,
wheat, inspection, weight,
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In all eight hundred and twenty-five.

The foregoing statutes, it can be seen, are, in most cases, against classes of offenses in which many acts in each class are included, so that the number of acts forbidden is at least one hundred greater than the number I have given in the subjects named. Also add to the foregoing enumeration offenses defined by acts of Congress against revenue, postal laws, etc., which apply in every State. The Legislature might have passed a sweeping statute forbidding everything that in its purpose or effect is against sound morality. It

will be seen that the Legislature has gone so far in its special definition of forbidden offenses as to legislate even in restraint of the temper and the tongue. The list of forbidden acts is growing, not only in the States of this Union, but with the advancing civilization of of every government of the world. Profanity is immoral, and has been forbidden by statute wherever civilization has reached respectable growth. Profanity was unlawful at common law, and the only purpose accomplished by a statute upon this subject is to fix a penalty. It is often urged that statutes should not be enacted that are in advance of public sentiment, and that if the law cannot be enforced so as to repress what it forbids it should be repealed, so as not to cause contempt for all law. Statutes against profanity are so frequently and so boldly disregarded that they stand almost as dead letters. No wise man, however, would favor the abrogation of these statutes and thereby remove the restraint from the brutal tongue. Profanity was condemned by the Ten Commandments more than three thousand years ago, and has been unlawful ever since by existing law under civilized conditions. It must not be overlooked that the commandments were only civil laws, intended solely for civil government on the earth among men. They were each in advance of

public sentiment several thousand years at least, but are each yet maintained with no prospect of abrogation, as standards of human conduct required by civil law. Nations, governments, and innumerable people have been destroyed because of disobedience to the principles announced, but the commandments stand unchanged as the law. No man has a legal right to be immoral, or to do any immoral thing where any person can hear or see his act. He has no legal right to associate with immoral persons or characters. The civil law can break open the door to the hiding place of immorality, disregard all rights of liberty and property, and drag the offender to the judgment seat. The notorious case of Oscar Wilde is a good illustration of the relentless pursuit of civil law after private sin and immorality and the crushing judgment against it.

The government demands in imperious terms private and public morality of its citizens, and undertakes to enforce its demands. It expends fabulous sums of money to educate and encourage the youth in the qualities of good citizenship. No stronger evidence could be adduced of the fixed and dominating influence of morality in government than the constitutional provisions, legislative acts, judicial decisions, and settled rules of law upon the subject.

CHAPTER V.

Legislation and Morality.

THE purpose of legislation is to provide for the emergencies of civil government. The limits to the power of legislation can be stated in a few words, without entering into refinements of constitutional provisions or legal learning. The Legislature can enact whatever the public necessity requires to be enacted in order to carry out the purpose of the government, which is the promotion of the public welfare, and it can do no more. As was clearly established in the second chapter of this work, morality is the fundamental principle in civil government. Therefore the Legislature can, by its action, do whatever tends to promote morality; but any act in antagonism to morality is void. Every act of the Legislature must be in harmony with morality.

Certain purposes must be in the mind of the Legislature in every act—either the encouragement and promotion of morality, intelligence, or business in the dealings, associa-

tions, and deportment of men, or the suppression of immorality. It will be found, upon careful examination of the civil and penal statutes, that they seek to accomplish the same ends. They seek to regulate and provide for the business transactions among men, so as to avoid conflict, injustice, or oppression. It will also be found upon careful examination that many of the criminal statutes are intended to enforce and protect the provisions of legislation upon business affairs. It is a great question whether criminal statutes are not increasing more rapidly than civil statutes. In fact, if it were not for the criminal disposition in business transactions, there would be little necessity for business regulations by law. In every government in Europe, as well as in the United States, the necessity is recognized for greater restraint by law in the interests of society and business upon immorality. A concise expression upon this subject, which might be multiplied with many other extracts of similar import, I quote from the Encyclopaedia Britannica, Vol. XI, page 18, what is said as to this line of legislation in England: "Coercion for moral purposes. The measures heretofore noticed may in general be justified either on the ground of inability of the persons protected to help themselves, or on the ground that some good society as a whole,

or to a large portion of it, is secured thereby.

"Another class of measures openly aims at the moral importance of the individuals affected by them, and in this class there is an amazing and alarming increase. The laws against gaming are one of the best examples. At common law a wager was a contract enforcable by law. Not content with declining to enforce wagers, the State went further and tried to put them down altogether. It made lotteries illegal. It visited with heavy penalties the keeping of betting houses in public places, the publication of betting lists, etc. Games which lead to betting are put under the restraint of a license system, and in some parts of the provinces the State orders its citizens not to play billiards after eleven o'clock at night. . . . The State first of all limits the number of public houses; then it dictates directly the hours during which liquor may be bought and sold; and in Scotland and Ireland it goes further, and prohibits altogether the sale of liquor on Sunday. A committee of the House of Lords has touched the highest point of government control in proposing to empower local authorities to shut up all the public houses in their districts and carry on the business for themselves. There is a simultaneous increasing tendency to interfere with people's amusements; fairs are being put

down as immoral, music and dancing require license charily granted, the grip of the chamberlain over the London theaters is tightening, and so on.

"The course of moral legislation, in fact, threatens to sweep away every barrier to the encroachment of the state.

"The extended range of government interference in other things has been accompanied, as we have seen, with a very distinct recommendation of limits, either in the rights of the individual conscience or in the capacity of adult manhood to manage its own affairs. But acts of Parliament for improving the moral characteristics of men seem to recognize no limit at all. And it is a singular fact that while this kind of legislation under existing social arrangements fails to affect the well-to-do classes, and oppresses chiefly the comparatively poor, it is becoming more and more identical with the popular party in politics, and gathers strength with every addition to the popular element in government."

The foregoing statement is a carefully prepared and unbiased article written and published more than fifteen years ago. Anyone who has observed the tendency in Germany, France, and Russia, or smaller governments in Europe, will find that what is said of this line of legislation in England is true of these gov-

ernments, though not to the same extent, and the same is true in the United State and in various States in this Union. It will also be found upon careful examination that the purpose of this line of legislation is to promote morality and suppress immorality. We hear the statement made by small politicians and men who only seek the attainment of personal ends, that men cannot be made moral by legislation, that morality should be left to the Church and to religious teachers or to home training. It is amazing the extent to which this idea obtains, not only in politics and partisan expression, but among all classes of people. It is not only erroneous, betraying dense ignorance, but is very dangerous. It is to this heresy we must attribute the treachery, scheming, and trickery of legislators, and sometimes of courts and executive offices. The facts are, morality has everything to do with legislation, everything to do with the executive and judicial departments, and everything to do with **everything** when civil government is in safe hands.

The great misfortune in legislation is that each legislative body feels that is it not goverened by ancient, long-settled, and well-determined rules, that it is largely independent and unrestricted by precedents. Considering the ignorance so often found in legislative

bodies, the utter lack of experience and the weakness of so many of the members, the skillful manipulators and light regard for consequences, it is not surprising that wise men have dreaded and feared the work of legislative bodies. Had it not been for the restraints against the wrong and the encouragement for the right that sound morality has thrown over these bodies, only disaster could have followed. There is no branch of the government, however, that offers greater encouragement to the student than the legislative, notwithstanding the weakness, inexperience, ignorance, corrupting influences and temptation. The history of this branch of government shows a constant rise in the scale of morality, whatever may sometimes appear to the contrary. It is constantly illustrated that one man of moral integrity and average intelligence in a legislative body is more than the equal of a score of immoral and depraved members.

Let it not be forgotten, let it be emphasized, repeated, emblazoned in the halls of every legislative body, that morality is a fundamental principle in legislation, and but for this principle, this law of nature, this law of God, this law of man, this good angel, popular government would fail. Morality cannot be disregarded by the Legislature; it must be regard-

ed, or the action of the body is void. Moral law was not created by a legislative body. It was never enacted. It was not created by the Constitution of the State or of the Nation. Neither the Constitution itself nor the Legislature can disregard it and the action be valid.

The Legislature may not bargain away the public morals permanently. It may not do so temporarily. It cannot bargain away the public morals for one year, for one day, nor for one hour. Neither the constitution nor the people themselves can do this. There is absolutely no power anywhere to bargain away or compromise public morality. No man can defeat and destroy it; it stands as a fundamental principle. What is meant by the police power of the State is the unlimited law of necessity, the authority in the Legislature and the judiciary and the executive to protect public morals, public health, public peace, and public welfare. In fact, as it appears to the author, "Police Power" is a doctrine and practice assumed, without statutory enactment, to restore common law principles and practice in proper cases.

CHAPTER VI.

Common Law and Morality.

IN addition to statutory law we have in Indiana, for our government, the common law.

Sec. 236, Revised Statutes of 1908, in Indiana, reads as follows:

"The law governing this State is declared to be . . ." Item 4. "The common law, and statutes of the British Parliament in aid thereof, prior to the reign of James I (except the second section of the sixth chapter of the forty-third year of Elizabeth and the ninth chapter of the thirty-seventh, Henry VIII), and which are of a general nature not local to that kingdom and not inconsistent with the first, second, and third specifications of this section."

Common law is defined as follows: "The common law is that which derives its force and authority from the universal consent and settled customs of the people. It has never received the sanction of the Legislature by express act, which is the criterion by which it is

distinguished from the statute law. It has never been reduced to writing.

"By this expression, however, it is not meant that all of these laws are at present merely oral, or communicated from former ages to the present solely by word of mouth, but that the evidence of our common law is contained in our books and depends on general practice and the judicial adjudications of our courts. The common law is derived from two sources, the common law of England and the practice and decisions in our own courts. There is no general rule to ascertain what part of the English common law is binding. . . . It may be observed generally that it is binding where it has not been superseded by the Constitution of the United States or of the several States, or by legislative enactments, or varied by custom, and where it is founded in reason and consonant to the common genius and manners of the people." No man can make a mark at the place or time where the rules of common law, or any one of them, were found; neither can he name the discoverer. However, as each of these rules has stood the test of ages and now prevails in Indiana and elsewhere, and is in perfect accord with the Ten Commandments and the law of Moses in its general character, it is an easy thing for men who believe in the divine authorship of the Ten Commandments

to believe that these same rules of common law were of divine origin. This theory takes these rules back to a source of super-human wisdom. The method of explaining rules and principles of law as now accepted by the most profound writers and authorities upon jurisprudence is the historic method; and this method of explanation traces the rules of common law to the source I have indicated. Any other theory as to the origin of these rules and principles of common law ends in mist and utter dissatisfaction.

In this work I have not stated and shall not insist, because I deem it unnecessary to the purpose in hand, that Christianity is part of the law of the land, though that may be claimed by citations of the highest authority. I am presenting the subject of morality from a different standpoint—from a standpoint to be accepted by men of any or no religious belief. It is not an open question, subject to controversy or debate in either branch of the law, whether statutory or common law, that morality is the fundamental rule and principle by which the law is regulated.

CHAPTER VII.

Common Law History of Morality.

FOR convenience and to be better understood, I quote at some length from highest authorities:

Kent's Commentaries, Vol. 1, 11th Ed., pp. 2 and 3: "We ought not, therefore, to separate the science of public law from that of ethics, nor encourage the dangerous suggestion that governments are not so strictly bound by the obligations of truth, justice and humanity, in relation to other powers, as they are in the management of their own local concerns. States, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life."

Note to the above on p. 2: "Heinecius in his 'Elements Juris Natum rae et Centium,' b. 1., c. 1 and 3 (and which is very excellent as to

the first branch of the subject), and all the other great masters of ethical and national jurisprudence, place the foundation of the law of nature in the will of God, discoverable by right reason and aided by divine revelation; and its principles, when applicable, apply with equal obligation to individuals and to nations."

"The law of nations, so far as it is founded on principles of natural law, is equally binding in every age and upon all mankind. But the Christian nations of Europe and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts and science and commerce as well as in policy and government, and, above all, by the brighter light and more certain truths and the more definite sanction which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves. They form together a community of nations, united by religion, manners, morals, humanity and science; and united also by the mutual disadvantages of commercial intercourse, by the habit of forming alliance and treaties with each other, of interchanging ambassadors and of studying and recognizing the same writers and systems of public law."

Note to above on p. 4: "The law of nature, by the obligations of which individuals are

bound, is identical with the will of God; and 'that will is ascertained,' says Mr. Manning, 'either by consulting divine revelation where that is declaratory, or by the application of human reason where revelation is silent.' Christianity, in the words of Butler, 'is an authoritative publication of religion;' and it is from the sanction which revelation gives to natural law, that we must expect the gradual increase of the respect paid to justice between nations.

"Christianity reveals to us a general system of morality, but the application to the details of the practice is left to be discovered by human reason."

See "Commentaries on the Law of Nations," by William Oke Manning, Esq., London, 1839, b. 2, c. 1: "This work is the first English treatise which I have seen containing a regular and didactic discussion of the science, and it is a work of great excellence. I beg leave to recommend it strongly to the attention of the American student."

Cooley's "Constitutional Limitations," 4th Ed., p. 587: "Whatever may be the shades of religious belief, all must acknowledge the fitness of recognizing in important human affairs the superintending care and control of the great Governor of the universe, and acknowledging with thanksgiving His bound-

less favors, or bowing in contrition when visited with the penalties of His broken laws. No principle of constitutional law is violated when thanksgiving or fast days are appoined; when chaplains are designated for the army and navy; when legislative sessions are opened with prayer or the reading of the Scriptures, or when religious teaching is encouraged by a general exemption of the houses of religious worship from taxation for the support of state government.

"Undoubtedly the right spirit of the constitution will require, in all these cases, that care be taken to avoid discrimination in favor of, or against, any one religious denomination or sect; but the power to do any of these things does not become unconstitutional simply because of its susceptibility to abuse. The public recognition of religious worship is not based entirely, perhaps not even mainly, upon a sense of what is due to the Supreme Being Himself as the Author of all good and all law; but the same reason of state policy which induces the government to aid institutions of charity and seminaries of instruction, will incline it also to foster religious worship and religious institutions as conservators of the public morals, and valuable, if not indispensable, assistants in the preservation of public order."

Cooley's "Blackstone," Vol. 1 (foot pages 22 and 23): "This law of nature, being coeval with mankind and dictated by God Himself, is of course superior in obligations to any other.

"It is binding over all the globe, in all countries and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid, derive all their force and all their authority, mediately or immediately, from this original. But, in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life, by considering what method will tend the most effectually to our own substantial happiness. And, if our reason were always, as in our first ancestor before his transgression, clear an perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience: That his reason is corrupt and his understanding full of ignorance and error.

"This has given manifold occasion for the benign interposition of divine Providence, which, in compassion to the frailty, the im-

perfections and blindness of human reason, hath been pleased at sundry times and in divers manners, to discover and enforce His laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the Holy Scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason in its present corrupt state; since we find that, until they were revealed, they were hid from the wisdom of ages. As, then, the moral precepts of this law are indeed of the same original with those of the law of nature, so their intrinsic obligation is of equal strength and perpetuity. Yet, undoubtedly, the revealed law is of infinitely more authenticity than that moral system which is framed by ethical writers and denominated the 'natural law;' because one is the law of nature, expressly declared so by God Himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have

equal authority; but, until then, they can never be put in any competition together.

"Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these."

Phelps' "Judicial Equity," p. 178 and 179; last half Section 130: "Beginning with the primative conception of equity as originally administered in England by the clerical chancellors (A. D. 836?-1530), two distinct sources are to be independently traced, to the divine law of morality upon the one hand, and the Roman civil law on the other."

Section 131: "Before making this inquiry, it will be found instructive to determine the exact place and value in the standard English literature of the word 'equity' itself. For the sake of brevity, it fortunately happens that there may be gathered from the English Bible and Shakespeare all that is necessary for that purpose. In the Old Testament Scriptures the word rendered in the standard English version 'equity,' occurs in close connection (Noscitur a siclis) with such terms as 'righteousness,' 'justice,' 'judgment,' 'wisdom,' 'truth,' and in contrast with 'iniquity.' Sometimes the same word is rendered in one version 'equity,' and in another 'uprightness' or 'justice.'

"Collection of texts exhibits 'equity' in the

Bible use as a complex ethical conception, covering that department of morals which inculcates absolute good faith, integrity and impartiality; equality of right in theory, and fairness in practice. Briefly, it stands for justice in the broad sense of the Roman law—jus suum cuique tribuere, jus being understood in opposition to lex. In the Bible, the word 'equity' is invariably used in the same sense."

Section 132: "Nothing was more natural than that the learned prelates, who held the great seal, should have taken the Bible meaning of 'equity' as their standard, and looked to the divine law of morality as the basis of their system of justice. Of this the evidence is pointed and clear.

"In the 'Year Books' (temp. H. 7), Archbishop Lord Chancellor Morton is thus reported: 'Well do I know that every law is, or of right should be, according to the law of God, and that the law of God forbids that an executor in bad faith waste all the goods of his testator; and, if he does so without making amends to the extent of his power, he shall be damned in hell.'

"So profoundly stamped was the system of primitive equity with this impression, that we find the divine law appealed to by the earlier lay chancellors in quite as emphatic terms as by their clerical predecessors. Ld. Chan. Elles-

mere (temp. Eliz.): 'The law of God speaks for the plaintiff. By the law of God, he that builds a house, ought to dwell in it; and he that plants a vineyard, ought to gather the grapes.' Deut. 28:30: 'And equity speaks as the law of God speaks.'"

Section 135: "Importing to this definition of the civil law the two elements referred to, it may be paraphrased into an approximately adequate conception of equity as administered under the ecclesiastical chancellors. It will then read: 'Equity jurisprudence was that system of justice founded on the ethics of the Bible and of the Roman law which was introduced by the chancellors for the public convenience, to assist or supplement the deficiencies and to correct the rigors of the common law."

Section 136: "For more than three centuries (1530—1875)) the administration of equity in England was in the hands of chancellors trained in the schools of the common law. It was imported into America and became a distinct part of the jurisprudence of many separate states as well as of the Federal Union. It has been elaborated into a system 'of almost infinite complexity and variety.' It is scarcely necessary to state that it is with modern equity, in its present state of development, that we are practically concerned. It is not in

any crude, primitive form that we are to look for the essential nature of equity, but rather in its maturity. Its doctrines and rules are progressive, they are refined and improved by use, they accomodate themselves to changed conditions of society and new methods of business and intercourse, and are to be found in modern rather than ancient cases."

Huxley in "Nineteenth Cent.," June, 1889, p. 940: "All that is best in ethics of the modern world, in so far as it has not grown out of Greek thought or Barbarian method, is the direct development of the ethics of the old Israel. There is no code of legislation, ancient or modern, at once so just and so merciful, so tender to the weak and poor, as the Jewish law."

Rutherford's "Institutes," Vol. II, p. 228: "Upon the whole, therefore, a number of individuals, by joining in a social compact, oblige themselves to act together, for the purpose of obtaining the common good of all and the particular good of each, as far as the particular good of anyone is consistent with the common good of all and with the particular good of others. But, where a number of persons bind themselves to act jointly for any purpose, the common understanding of such society is their guide, in respect of what they are to do and what they are to avoid in order to obtain these

purposes. A civil society, therefore, has a right, by its common understanding, thus to guide itself and its several members. And, since the legislative power of such society consists in the right, it follows that whatsoever is necessary or conducive to the common good of the society, or to the particular good of the several members, as far as the particular good of any one is consistent with the common good of all and with the particular good of others, it is the proper object of legislative power. Now, civil laws are nothing else but such rules, as the legislative power of a civil society establishes for the direction of all and each of its members. Whatever, therefore, is the proper object of civil legislative power, it is likewise the proper matter of civil laws."

Sander's "Justinian" (Introduction), p. 15: "By far the most important addition to the system of Roman law which the jurists introduced from Greek philosophy, was the conception of lex naturae.

"We learn from the writings of Cicero whence this conception came and what was understood by it. It came from the Stoics, and especially from Chrysippus. By Natura, for which Cicero sometimes substitutes mindus, was meant the universe of things, and this universe the Stoics declared to be guided by reason. But as reason is thus a directive

power, forbidding and enjoining, it is called law (lex est ratio summa insitia in nature, quea ea quea facienda sunt prohibetique contraria). But nature is, with the Stoics, both an active and a passive principle, and there is no source of law of nature beyond nature itself. By lex naturae, therefore, was meant primarily the determining force of the universe, a force inherent in the universe by its constitution (lex est naturae vis). But man has reason; and, as reason cannot be two-fold, the ration of the universe must be the same as the ration of man, and the lex naturae will be the law by which the actions of men are to be guided, as well as the law directing the universe. Virtue, or moral excellence, may be described as living in accordance with reason or with the law of the universe. These notions worked themselves into Roman law, and the practical shape that they took was that morality, so far as it could come within the scope of the judges, was regarded as enjoined by law. The jurists did not draw any sharp line between law and morality. As lex naturae was a lex, it must have a place in the law of Rome. The praetor considered himself bound to arrange his decisions so that no strong moral claims should be disregarded. He had to give effect to the lex naturae, not only because it was morally right to do so, but also because

the lex naturae was a lex. When a rigid adherance to the doctrines of the jus civile threatened to do a moral wrong and produce a result that was not equitable, there the lex naturae was supposed to operate and the praetor, in accordance with its dictates, provided a remedy by means of the pliant forms of the praetorian actions.

"Gradually the cases, as well as the modes in which he would thus interfere, grew more and more certain and recognized, and thus a body of equitable principles was introduced into Roman law. The two great agents in modifying and extending the old, rigid, narrow system of the jus civile were thus the jus gentium and the lex naturae that are generalizations from the legal systems of other nations; and morality was looked on, according to the philosophy of the Stoics, as sanctioned by a law. But as, on the other hand, the generalizations from experience had in themselves no binding force, and as, on the other hand, the best index to ascertain what morality commended, was to examine the contents of other legal systems, the jus gentium and the lex naturae were each the complement of the other, and were often looked on by the jurists as making one whole to which the term jus gentium was generally applied."

The common law contained a code and sys-

tem of morality. What ever that code and system were, became the code and system of Indiana to the extent of the moral principles involved, not only by the law of nations but also by specific adoption and recognition in our constitution. The same principle applies in all other states. The common law of England traces morality as a legal principle back to the law of nature, to the law of God, as the authorized source of morality. Where there has been any dissent from this view of the unbroken chain in the descent of this legal principle, such contrary view has been without any substantial support and of short duration. When the word "morality" was used in our constitution, it was used as a legal term derived from the common law and to be understood in the common law sense, usage, history and interpretation. In fact, morality is the foundation principle of the common law and stands in the state constitutions in the same position it occupied in the common law.

CHAPTER VIII.

Morality In Civil Court.

THE moral law, with its rules and standard established by the learning, experience, religious teaching, divine revelation, and judicial decisions of the past, is as binding upon the citizens as the civil law, because it is a part of the civil law. Every legislator, every governor, every judge, every lawyer, in entering upon the duties of his office, holds up his hand toward heaven and takes an oath to obey the constitution and to perform the duties of his position, **so help him God.** This appeal for help to God means something. It is not an empty form. Either it is blasphemy, in taking the name of God in vain, or is mockery, or is an idle performance, or it is the most solemn ceremony that can be performed. The person by whom this obligation is administered and the person to whom it is administered are dissembling and are playing the role of the arrant hypocrite, or else they are acting the part of the highest citizenship and highest patriotism. It is very clear

that Almighty God will not help the legislator, nor the governor, nor the judge, nor the attorney in any way to establish, or protect, or excuse any business, or transaction, or thing that is against morality. Even if the Legislature does attempt to give sanction and confer its authority upon any enterprise which is immoral in its nature or which results in immorality, then the governor and the judge have each an oath registered in heaven to declare such legislation void. The United States Supreme Court in the case of Mugler vs. Kansas, 123 U. S., 205, has defined the duty of the court in such a case as follows:

"The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things whenever they enter upon an inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, public morals, the public peace, or the public safety, has no real or substantial relation to these subjects, or is a palpable invasion of rights secured by the fundatmental law, it is the duty of the court to so declare, and thereby give effect to the Constitution."

Nothing has contributed to bring courts and the legal profession into disrepute, thereby

encouraging mobs and white-cap proceedings so much as the general impression that morality has not a place in judicial proceedings, either in fact or in theory.

In recent years the town of Roby, Indiana, has become distinguished as a location of enterprises of stupendous character for gambling and depravity of all kinds. I have been greatly interested in the discussion through the public press and in the expressions quoted from attorneys which assert that these things have been authorized by an act of the Legislature, and therefore could not be prevented. It would be very difficult to ascertain just how such conclusion was reached. As an illustration, one would infer that it had been reached by turning the pages of our statutes looking for an enactment concerning Roby, Jackson, and Corbett. Finding no act upon either of these specifically, it was then declared that, as there was no act upon this subject, therefore James Corbett and Peter Jackson could proceed with a prize fight at Roby without any restraint from the law. While opinions upon this basis were being freely given a Chinaman was arrested in the city of Indianapolis for the establishment and maintenance of an opium-smoking joint. He was brought before the court upon a criminal charge for that offense. The same class of attorneys and self-styled

profound investigators of legal principles, figuratively speaking, turned the pages of the statutes of the State of Indiana and the ordinances of the city of Indianapolis looking for enactments in regard to Chinamen and opium-smoking joints. The found no such laws. They found no allusions to Chinamen or to opium-smoking joints in the statutes of the State or in the ordinances of the city; but the Chinaman was convicted, fined $500, and sent to the workhouse for six months. That case was clearly sustained by law, though not one word in regard to the offenses charged could be found in any law book, or statute, or city ordinance. The penalty, however, was too severe. The case was founded, and properly so, upon the immorality of the Chinaman's business and its bad affect upon the public health and public morals. No legislative act could be passed that could authorize or protect such a business. Neither could any act be passed, however solemn its form, that would protect the exhibitions at Roby.

As no act of immorality can be lawful or protected by legislation, so no decision of a court can long stand that in any way favors, protects, or excuses immorality. No act of the Legislature that contemplates or results in promoting immorality can be valid.

The judicial is the most important branch

of any government. I have called attention to the fact in a former chapter that legislative bodies were liable not to feel themselves bound by fixed and settled rules or precedents, and were liable to act upon the impression of their entire independence. This can never be the impression under which courts of justice act. Courts are bound by rules and principles that have been recognized and developed by the learning, experience, and integrity of thousands of years, and are stronger to-day in their binding force than they were when Columbus discovered America. The most salutary rules of law, or, properly speaking, the most salutary laws, were never enacted by any Legislature, but have been developed by judicial decisions. These rules have been settled by the most profound learning and experience; have been thoroughly considered, tested, applied to emergencies, and are established. Courts, in the application of these rules, have differed sometimes, misapplied, overruled their own decisions, and readjusted their views to meet the requirements of these great principles.

We have often had occasion in Indiana, as has been the case in other States, to apply the rules of common law to questions where there has been no statutory provision, and these emergencies are likely to arise in all the future. There is one distinct, well-defined principle

running through the civil law—the law of Rome—reaching beyond the Christian era, older than constitutions and republican forms of government, and maintained continuously down through all existing systems by judicial tribunals, **that morality is to be conserved in all judicial actions.** It is true that the comprehension of morality was sometimes vague, yet as comprehended, it was regarded as fundamental. The time and attention of courts, in the United States especially, are very largely required in an effort to construe and apply well-settled rules of law to crude and badly-considered legislative acts, considered and passed by legislative bodies composed of men who know little or nothing of legal principles. However ignorant or depraved the Legislature may be, courts are bound to accept its acts as the law, if they are harmonious with the Constitution, by using all presumptions in their favor that are consistent with fundamental principles.

The government expects and demands the exertion of each of its departments in one harmonious effort to promote the purposes for which it exists. The departments of government—executive, legislative, and judicial—can only act legally within the respective scope of each department. Each, however, has to do with the enactment of laws, so far as legislation

is concerned. The judicial department, however, has not only the duty and responsibility of construing and declaring and settling the law as it is represented in legislative acts, but has also to apply these ancient principles of the common law in many cases, and, in addition thereto, the rules of what is generally termed "public policy;" in other words, "The law of public necessity." The rules of public policy, or, what is the same thing, the law of public necessity, are limited only by the extent of the necessity. There is set up before each department of the government, however, a standard for its guidance. This standard is public morality. It must measure and weigh every act. It is the one standard, and the only one, that commands obedience in all respects.

In 1840 the Supreme Court of Indiana was composed of three judges, each of remarkable ability and high moral and religious character. Without disparagement to the reputation of any of the learned and good men who have occupied the Supreme Bench in our State, I can assert, without offense, that that high court has never been composed of men superior in all regards to Judges Isaac Blackford, Jeremiah Sullivan, and Charles Dewey.

In the case of Watts, et al. vs. Pratt, 5th Blackford, 337, Judge Dewey delivered the unanimous opinion of the court in concise and

clear language, defining the rule of law governing courts in such cases, in the following language: "The subject of this law is to protect the public morals and preserve the peace and quiet of society; being designed for the public good, it should be so construed as to promote it."

I quote again in this place what I have previously quoted from the Supreme Court of the United States, because, this being the highest tribunal in the nation, its decision must be taken as the settled law, and I need not support the proposition further by the citation of many cases, as I would otherwise feel compelled to do. The court defines the duties of courts as follows:

"The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things whenever they enter upon an inquiry whether the Legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, the public peace, or the public safety, has no real or substantial relation to these subjects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the court to so declare, and thereby give effect to the Constitution."

What is designated in law as public policy is a matter of such uncertainty, and about which there is so little general information, that I feel called upon to offer some explanations of this term, because it is the duty of the courts to determine what is public policy, and where it applies. In American and English Encyclopedia of Law, Vol. IX, page 880, under the heading "Public Policy Explained," the following explanation is given:

"This term is equivalent to the policy of the law. It is applicable to the spirit as well as to the letter. Whatever tends to injustice or oppression, restraint of liberty, commerce, and natural or legal rights, whatever tends to the obstruction of justice or to the violation of the statute, and whatever is against good morals when made the object of a contract, is against public policy, and therefore void, and not capable of enforcement. A form of contract may be legal on its face. There may be parties, competent, willing, and agreed upon the subject-matter, who enter into an agreement to do or not to do, with an apparently fair consideration stipulated, but their agreement is null and futile if its object is judicially immoral or against the policy of law. . . . . In construing contracts, courts hold entirely void those that are partly illegal in their object. Legal stipulations are treated as unwrit-

ten when interwoven with others designed to controvene the law, or tending to that end. An illegal consideration will not be analyzed or dissected so as to separate good simples from bad, when the compound is noxious, rendering the object of the contract unlawful."

Bishop, on Contracts, sec. 467, speaking of the rule of law as applied by courts, says:

"Contracts, illegal or of evil tendency, immoral or contrary to the policy of the law, or to public policy; agreements between parties to do a thing prohibited by law, or subversive of public interest, which the law cherishes; forbidden either by the common or the statutory law, whether it is malum in se, or merely malum prohibitum, indictable or only subject to the penalty of forfeiture; or however otherwise prohibited by statute or the common law," are void.

Courts look at the result from the execution of contracts, and if they result in immorality they are void, though they may seem to be harmless. In the case of Riley vs. Gordon, 122 Mass., 231, the court says:

"A contract may be illegal, though fair on its face."

No gambling contract or contract having an immoral consideration or contract to compel the performance of an immoral act, nor the payment of money for an immoral act per-

formed, can be enforced in court. It is a maxim of the law, especially of equity, that the litigant who institutes an action in court must come with clean hands.

CHAPTER IX.

Morality Is Fundamental Law.

SHELDON, Amos, A. M. Professor of Jurisprudence in the University College, London, Tutor to the Inner Temple of Jurisprudence, Civil Law and International law in a work published in 1872, entitled "Systematic View of the Science of Jurisprudence," Vol. 1, p. 515, says: "The purpose of the law is to fortify and to maintain public morality, and not to create and invent it; give solidity and permanence to the essential relationship on which national life depends, and not to be the formation of their vital energy; to secure for every man and woman, for the creation of rights and duties, a clear and open space for unrestricted action, within which they are free to develop all their faculties without hindrance or intrusion from without; and to uphold the security of such institutions as the voluntary efforts of mankind may devise or adopt, as seems to them best calculated to quicken or develop or invigorate the moral aspirations of the race."

Bishop, for thirty years recognized in the

United States as a standard authority on criminal law, in his work on that subject says, Section 495: "Morality, religion and education are the three pillars of the state and the substance of all private good. A community from which they are banished represents more than the gloom of original chaos. Therefore, they should be the objects of primary regard by the law."

Also Section 500: "But, however uncertain may be the precise extent to which the common law protects Christianity, there is no question that it practically and fully cherishes the public morals. And it punishes as a crime every act which it deems sufficiently evil and direct, tending to impair the public morals."

The same author in his work on "Contracts," enlarged edition, Section 505, says: "Prominent among the interests which the law protects, are the public morals."

In the case of Stanton vs. Allen, 5 Denio (New York Report), p. 434, the Court of Appeals of New York said: "Sound morality is the cornerstone of the social edifice—whatever disturbs that, is condemned under the fundamental rule."

In Forbes vs. Cochrane, 2 Barnewall & Crosswell's Reports (English) 471, the Court said (1824): "The proceedings in our courts are founded upon the law of England, and

that law is again founded upon the law of nature and the revealed law of God. If the right sought to be enforced is inconsistent with either of these, the English municipal courts cannot recognize it. It take it that that principle is acknowledged by the laws of all Europe."

The same Court comments on certain acts of Parliament, recognizing and encouraging slavery, as follows (p. 470): "If, indeed, there had been any express law, commanding us to recognize those rights, we might then have been called upon to consider the propriety of that which has been said by the great commentator upon the law of this country; that, "If any human law should allow or enjoin us to commit an offense against the divine law, we are bound to transgress that human law."

"It appears to have been recognized by the French courts in the celebrated case alluded to by Mr. Hargrave in his argument in the Somerset case. Mr. Justice Blackstone, in his 'Commentaries', Vol. 1, p. 42, says: 'Upon the law of nature and the law of revelation, depend all human laws; that is to say, no human law should be suffered to contradict these.'"

Pomeroy's "Equity Jurisprudence," Vol. 1, last half of Section 63: "It is true that many of the precepts of this moral code relate to

mankind considered as members of an organized society—the State—and prescribe the obligations which belong to them as component parts of a national body; and, therefore, these precepts are jural in their nature and design, and the duties which they impose upon individuals are of the same kind as those imposed by the human authority of the State. It is also true that human legislation ought to conform itself to, and embody, these jural precepts of the coral code; every legislator, whether he legislate in a Parliament or on the judicial bench, ought to find the source and material of the rules he lays down in these principles of morality; and it is certain that the progress towards a perfection of development in every municipal law, consists in its gradually throwing off what is arbitrary, formal and unjust, and its adopting, instead, those rules and doctrines which are in agreement with the eternal principles of right and morality. But it is no less true that this work of legislation has been done, until the human lawgiver has thus borrowed the rules of morality and embodied them into the municipal jurisprudence by giving them human sanction and morality is binding upon the citizens of a State as a part of the law of that State. In every existing municipal law belonging to a civilized nation, this work of adaptation and incorporation

has been performed to a greater or less degree."

Section 65: "'Equity' alone does not embrace all the jural moral precepts which have been made active principles in the municipal jurisprudence. The 'law,' even the 'common law', as distinct from statutory legislation, has, in the course of its development, adopted moral rules, principles of natural justice and equity, notions of abstract right, as the foundations of its doctrines, and has infused them into the mass of its particular rules. Unquestionably, at an early day the common law of England had comparatively little of this moral element; it abounded in arbitrary dogmas—as, for example, the effect given to the presence or absence of a seal; but this was the fault of the age, and the sin was chiefly one of omission; the ancient law was, after all, rather unmoral than immoral.

"But this has been changed, and at the present day a large part of the 'law' is motived by consideration of justice, based upon notions of right and permeated by equitable principles, as truly and to as great an extent as the complementary department of the national jurisprudence which is technically called 'equity.' This work of elevating the law has been accomplished by two distinct agencies, judicial legislation and parliamentary legislation. At the present day the latter agency is the most active and by

far the most productive; but, prior to the epoch of conscious legal reform which begun in England about 1830, and at a considerably earlier day in this country, the great work of legislation within the domain of private law, except in a few prominent instances, such as the Statute of Uses, of Wills, etc., was done by the law courts. In expanding the law, the judges in later times have designedly borrowed the principles from the moral code, and constructed their rules so as to be just and righteous. The Legislature has also conformed the modern statutes to the precepts of a high morality, and their legislation has tended to correct any mistakes and to suply any omissions in the body of rules constructed by the legislative functions of the courts."

Middle part of Section 67: "On account of the somewhat arbitrary and harsh nature of the common law in its primitive stage, these doctrines and rules of equity were intentionally and consciously based upon the precepts of morality by the early chancellors who borrowed the jural principles of the moral code and openly incorporated them into their judicial legislation. This origin gave to the system which we call 'equity' a distinctive character which it has ever since preserved. Its great underlying principles, which are the constant sources, the never-failing roots, of its particu-

lar rules, are unquestionably principles of right, justice and morality, so far as the same can become the elements of a positive human jurisprudence; and these principles, being incorporated into the system, and being essentially unlimited, have communicated their own vitality and power of adaptation to the entire branch of the national jurisprudence, of which they are, so to speak, the super-structure."

Dr. Francis Lieber was educated and received high cultivation in the schools of France. Among his other works was his "Manual of Political Ethics" (morality) which he wrote and published in 1878. Chancellor Kent says, in approval of this work: "Dr. Francis Lieber, in his 'Manual of Political Ethics,' has shown with great force and by the most striking and opposite illustrations, the original connections between right and morality, and the reason or the necessity for the application of the principles of ethics (morality) to the sciences of politics and administration of government. The work is excellent in its doctrines, and it is enriched with various and profound erudition."

"Right and Law," by George H. Smith, p. 71: "It seems, indeed, that part of the very nature and constitution of man that his actions shall in the main be immediately determined by custome and habit; and hence, using the term in its widest sense, as including not only

simple customs, but also those which are accompanied by a conviction of their moral recself (jurispudence as a branch of morality) depends **mainly upon custom for its** practical operation; though it is the function of morality as a science to judge of the rectitude of customs, and as an art to correct and reform them."

Note 2, p. 71: "Customs are made by time and usage, and do obtain the force of laws in particular places and nations; but not otherwise than upon the supposition that they were reasonable at the beginning."

Page 73, Section 85: "Nearly all questions as to rights (as will be shown more fully hereafter) may be determined by the above principles. Where doubtful questions arise which cannot be determined, the principles of utility must be resorted to; for all theories of right unite in the proposition that conformity to right must conduce to the welfare of mankind; and utility, or tendency to promote that welfare, may, therefore, be assumed to be, if not of the essence, at least as a property, of right, and, therefore, universally to be affirmed of it. It, therefore, follows that nothing which is pernicious, or contrary to utility, can be right."

Page 73, Section 87: "The principle of utility in the negative form in which we have stated it, is embodied under the name of the

argumentum ab inconvenienti, in one of the fundamental mixims of our law; and there are few principles more frequently referred to and relied upon by jurists than this. The maxim as given by Coke is, 'Argumentum ab inconvenienti plurium valet in lege'; and he adds, 'The law, that is, the perfection of reason, cannot suffer anything that is inconvenient'; and therefore he says: 'Nihil quod est inconveniences est licitum', and that 'judges are to judge of inconveniences as of things unlawful.'"

Page 77, Section 94: "It is equally clear that the decent observation of morality is also demanded by the rights of individuals, and that its open violation is inconsistent with these rights. For such violation of the principles of morality generally observed by the community, would constitute what is technically called nuisance (N. Y. C. C., Section 1949, and authorities cited), and is incomparable with the comfortable enjoyment of existence and the free exercise of the faculties in the pursuit of happiness, as a noxious smell or poisonous exhalation."

Note 1, on same page: "It is also obvious that the right to the maintenance of the public security, implies the right to the preservation of the State; and the latter again implies the right to a certain extent to maintain and pre-

serve the morality of the community, for no fact is more certain, historically, than that the decay of morality and the general corruption of society is incompatible with the well-being, and generally with the permanent existence, of the State. This right, however, so far as it rests upon this ground, does not pertain to any individual or individuals, but to the State only in its corporate capacity, and is therefore to be classed with political rights."

Page 309, Section 455: "The assertion of a distinction between the legally and morally right, or just, clearly involves an illegitimate use of the terms. For, if there are any terms in our language that have a perfectly definite signification, they are the terms 'right' and 'wrong,' 'just' and 'unjust'; and whatever difficulty there may be in determining the nature of moral distinction, it is at least certain that these terms refer to one supreme standard by which all acts are judged to be right or wrong, just or unjust, according as they conform, or fail to conform, to it."

Section 456: "There are, indeed, several standards to which the question of right and wrong in particular cases, or classes of cases, may be referred; but, of these, one is supreme and all others are subordinate. Thus the command of a parent is, within certain limits, the standard of right for the child, and, where the

parties are bound by contract, the will of the one is to the other, to the extent of his obligation, the standard of the just and the unjust."

Note 1, on same page: "It is also obvious that standard is confessedly subordinate, and conformity to it is right or just merely because conformity to some higher standard required it."

Section 458: "So, too, with reference to a vast range of subjects. The rectitude of actions is determined by their conformity to the will of the State or to custom or to utility; but, when we assert that an act is right or wrong from its conformity or non-conformity to one of these standards, we do not merely assert such conformity or non-conformity, but also that the standard referred to either conforms to a higher standard, or is itself the supreme standard. Hence, the assertion that mere conformity to the will of the State constitutes right in any sense, involves the assertion that that will is the paramount standard of right and wrong. In this matter we cannot serve two masters, but must declare our allegiance to one or the other. If the will of the State is, as Austin asserts, the supreme rule of justice, it is not reasonable to that will to assert that anything can be just which conflicts with it, or unjust which conforms to it. On the other hand, if it be assumed that there is a

higher standard than the will of the State, it is a direct attack upon the principle of morality to recognize any species of right and wrong, just and unjust, that is not determined so as to be by that standard;, for upon this assumption, the term 'legally right', or just, connotes, as we have observed, both legality and rightness, or justness, and cannot properly be affirmed of anything that lacks either quality. To say, therefore, that anything can be morally wrong and legally right, or vice versa, is as much a contradiction in terms as to say that a crooked line can be straight in any sense, or an uneven surface plane."

Page 550 (3): "The notions of just and unjust, moral and immorals, good and bad, may all be resolved into that of utility and the opposite."

Wood in his work on "The Law of Nuisances", 3rd Ed., Vol. i, Section 23, under the heading, "Acts affecting public morals, public nuisances per se, when": "There are classes or kinds of business which are nuisances per se, and the very fact that they are carried on in a public place is prima facie sufficient to establish the offense. But, in such cases, if the respondent questions that the use of his property in the manner charged in the indictment produces the effects set forth therein, and introduces evidence to sus-

tain his position, it then becomes necessary to prove that the effects are such as are charged. But there are a class of nuisances arising from the use of real property and from one's personal conduct that are nuisances per se, irrespective of their results and location, and the existance of which only need to be proved in any locality, whether near to, or far removed from, cities, towns or human habitations, to bring them within the purview of public nuisances. This latter class are those intangible injuries which affect the morality of mankind, and are in derogation of public morals and public decency"

Same authority under heading, "Wrongs malum in se", Section 24, says: "This class of nuisances are of that aggravated class of wrongs that, being malum in se, the courts need no proof of their bad results and require none. The experience of all mankind condemns any occupation that tampers with the public morals, tends to idleness and promotion of evil manners; and anything that produces that result, finds no encouragement from the law, but is universally regarded and condemned by it as a public nuisance. * * * * It cannot be expected that I can give a list of every possible public nuisance, for it must be understood that whether a particular occupation, act or thing has been declared a nuisance

or not, is a matter of small importance. If it comes within the rules that have been established by the courts, and such as have been dictated by the highest wisdom and soundest public policy, and is productive of the ill results that characterize these wrongs, it is a public nuisance and will be punished as such, although the offense is new and has never before been specifically classified as such."

Fonblanques's "Equity, p. 1: "It is plain that law is a moral science, since the end of all law is justice; and justice, in all the most extensive sense of the word, differs little from virtue itself, for it includes within it the whole circle of virtue."

CHAPTER X.

The Superhuman In Law.

IN this nation, especially, we have recognized the rulership and law of Almighty God completely and without reserve. The first step in the convention called to draft a constitution for the United States government, George Washington, as the presiding officer, opened the business by offering a prayer of thanksgiving to Almighty God for His leadership, His guidance, the victory He had given the people of the nation, and invoked His guidance, aid and divine rulership in the future. When called on to take the oath of office as the first President, George Washington did so, laying his hand upon the Bible and promising to perform the duties of his office, so help him God. Every President has taken the oath in the same manner, invoking the same divine aid, some of them kissing the Book, and in each case with religious service to Almighty God as a part of the inaugural ceremony. The first Continental Congress was opened with thanksgiving and invocation

to Almighty God upon the motion of Samuel Adams, and with religious service of the most solemn and affecting character. Chaplains are employed by provision of Congress for the army and navy, to pray and counsel with the sick, and to teach the sick and well doctrines revealed by Almighty God. The judges and all the officers of the Federal Courts take the oath of office, calling upon Almighty God. The sessions of Congress are opened with prayer to Almighty God. Attorneys, witnesses, jurors and in all cases where the oath is required, is concluded with an appeal to Almighty God. The same thing is true as to the Governor, sessions of the Legislature, legislators, all officers, and where an oath is required in the State of Indiana, and has been ever since its organization. Blasphemy against Almighty God was a crime at common law, and is by statute in Indiana. I do not claim that the Christian religion is a part of the law of the land; yet, as the conduct and teachings of Christ were in harmony and in exemplification of the code and system of morality as taught by the revealed will of God, it follows logically and as amatter of law that Christian morality is the same as the revealed morality of God, and the same as referred to in the constitution of Indiana. As the Christian religion was the prevalent religion generally recognized

by the people of Indiana when our constitution was adopted, and is in harmony with the highest known system of morality, it follows that the teachings of the Christian religion on this subject are entitled, at least, to greater weight than any other system of religion and morality, with the courts.

I am not driven to the necessity in this case of basing my claim upon the legal proposition that Christianity is a part of the law of the land, but I do assert that the civilization which obtains in the United States and in Indiana has been, from the beginning of this government, the Christian civilization; and the standard of morality that has obtained in these governments from the beginning, has ever been, and is now, the Christian standard of morality, which is the same as the Mosiac and the Bible standard.

I call attention to the proclamation announcing a day of thanksgiving, issued by President McKinley in 1898, as follows:

"Washington, Oct. 28, 1898.

"The approaching November brings to mind the custom of our ancestors, hallowed by time and rooted in sacred traditions, of giving thanks to Almighty God for all the blessings he has vouchsafed to us during the past year, as few years in our history have afforded such cause for thanksgiving as this. We have been

blessed by abundant harvests, our trade and commerce have been wonderfully increased, our public credit has been improved and strengthened, all sections of our common country have been brought together and knitted into closer bonds of national purpose and unity.

"The skies have been for a time darkened by the cloud of war; but, as we were compelled to take the sword in the cause of humanity, we are permitted to rejoice that the conflict has been of brief duration, and the losses we have had to mourn, though grievous and important, have been so few, considering the great results accomplished, as to inspire us with gratitude and praise to the Lord of Hosts. We may laud and magnify His holy name that the cessation of hostilities came so soon as to spare both sides the countless sorrows and disaster that attend protracted war.

"I do, therefore, invite all my fellow-citizens, as well those at home, as those who may be at sea, or sojourning in foreign lands, to set apart and observe Thursday, the 24th day of November, as a day of National Thanksgiving, to come together in their several places of worship for a service of praise and thanks to Almighty God for all the blessings of the year; for the mildness of the seasons and the fruitfulness of the soil; for the continued prosperity of the people; for the devotion and valor of

our countrymen; for the glory of our victory and the hope of righteous peace; and to pray that the divine guidance which has brought us heretofore to safety and honor, may be graciously continued in the years to come.

"WILLIAM McKINLEY,
"President of the United States."

At the beginning of July, 1864, the Union army in the East had been unsuccessful in a number of important movements and engagements, and the pressing demand for troops had left the city of Washington almost without defense, either as to fortifications or troops. This condition had been discovered by the Commanders of the Confederate forces, and their movements made it clear that they contemplated an attack on Washington City. Congressmen were so greatly alarmed, as they might well have been, that on the 2nd day of July, 1864, they passed a concurrent and unanimous resolution requesting President Lincoln to issue a proclamation, to designate a day and call on the people of the Nation to assemble in their respective places of divine worship and pray for the protection of the United States Government against its enemy. Following that action of Congress, a sketch of conditions at the time of that action and a few days immediately thereafter, shows how alarming the conditions were. On the 5th day of July, 1864,

the Confederate General, Jubal A. Early, with probably twenty-five thousand troops, crossed the Potomac river at Shephardstown, a mile or two north of Harper's Ferry. into Maryland, for the purpose of capturing the Nation's Capitol. The first army in his way was commanded by General Lew Wallace and stationed at the Monocacy River near Fredericks City, Maryland. General Early gained such a signal victory over that army that the Union command was almost destroyed for effective service in the emergency following the battle. Flushed with victory, General Early pushed his force from the Monocacy River toward Washington City, about three days' march away. Reasoning from the actual conditions, it seems clear that, if General Early had pushed from Monocacy to Washington and pressed the battle there as he did at Monocacy, he would have captured the city and the Capitol. However, hesitation, lack of determination and evident lack of confidence on the part of General Early when he came in sight of Washington, in the accomplishment of his final purpose, saved Washington, rather than the temporary fortifications and the number of the military force which he encountered. So intense was the gloom hanging over the city of Washington and the Capitol of the Nation on account of these movements of the enemy and the help-

less condition of the city, that, on the 7th day of July, 1864, President Lincoln issued the following:

"Proclamation.

"Whereas, the Senate and House of Representatives at their last session adopted a concurrent resolution which was approved on the second day of July, instant, and which was in the words following, namely:

"That the President of the United States be requested to appoint a day for humiliation and prayer by the people of the United States; that he request his constitutional adviser at the head of the Executive Department to unite with him as Chief Magistrate of the Nation, at the City of Washington, and the members of Congress, and all magistrates, all civil, military and naval officers, all soldiers, sailors and marines, with all loyal and law-abiding people, to convene at their usual places of worship or wherever they may be, to confess and implore the compassion and forgiveness of the Almighty, that, if consistent with His will, the existing rebellion may be speedily suppressed, and the supremacy of the constitution and laws of the United States may be established throughout all the States; to implore Him, as the Supreme Ruler of the world, not to destroy us as a people, nor suffer us to be destroyed,

by the hostility or connivance of other nations, or by obstinate adhesion to our own counsels which may be in conflict with His eternal purposes, and to implore Him to enlighten the mind of the Nation to know and to do His will, humbly believing that it is in accordance with His will that our place should be maintained as a United People among the family of nations; to implore Him and His infinite goodness to soften the hearts, enlighten the minds and quicken the conscience of those in rebellion, that they lay down their arms and speedily return to their allegiance to the United States, that they may not be utterly destroyed, that the effusion of blood may be stayed, and that unity and fraternity may be restored and peace established throughout our borders.

"Now, therefore, I, Abraham Lincoln, President of the United States, cordially concurring with the Congress of the United States in the penitential and pious sentiments expressed in the aforesaid resolution, and heartily approving of the devotional design and purpose thereof, do hereby appoint the first Thursday of August next to be observed by the people of the United States as a day of national humiliation and prayer.

"I do hereby further invite and request the heads of the Executive Departments of this Government, together with all legislators, all

judges and magistrates, and all civil, military or naval, and all soldiers, seamen and marine in the National service, and all the other loyal and law-abiding people of the United States, to assemble in their preferred places of worship on that day, and there and then to render to the Almighty and Merciful Ruler of the Universe such homage and such confessions, and to offer to Him such supplications as the Congress of the United States have in their aforesaid resolution so solemnly, so earnestly and so reverently recommended.

"In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington this seventh day of July, in the year of our Lord one thousand, eight hundred and sixty-four, and of the Independence of the United States the Eighty-ninth.

(L. S.) "ABRAHAM LINCOLN,

By the President: "William H. Seward,

"Secretary of State."

Could there be any way of expressing the sentiment of the United States Government, or any more comprehensive expression of the scope of the sentiment, than the foregoing document? The conditions under which the foregoing action of Congress was taken and the proclamation of the same was issued, was such

as to justify and make conclusive the fact that said action of Congress was earnest and sincere.

What mockery and sacrilege is all this on the earth, in the sight of high heaven, in the light of all our history, usage, recognition, oaths with uplifted hands, constitutional provisions and pretended solemnity, if, after all this, the legislatures and courts may destroy morality. Shall we shout over our victories which we acknowledge God has given us, ask His guidance, and then defy His laws, and courts disregard them, and the people make them the subject of mockery? All the influences seeking to lead the public thought in such a direction, are the same that, through the dark ages of paganism, brought disgrace and destruction to civil government.

I quote from the farewell address of George Washington for the purpose of showing his understanding of the meaning and importance of morality; and, as his expression has been universally approved, it becomes the universal understanding and interpretation of morality as a proposition in civil government, as follows:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of

human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation does not direct the oaths which are the instrument of investigation in the courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion.

"Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious belief. It is substantially true that virtue or morality is a necessary spring of popular government. The rule extends with more or less force to every species of government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

Indiana Constitution.

The constitution of Indiana begins by recognizing Almighty God as lawgiver and ruler, and by acknowledging dependence and declaring loyalty to Him. The preamble reads as follows:

"To the end that justice be established, public order maintained, and liberty perpetuated, we, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this constitution."

What does this preamble to our constitution, the first declaration of the convention in framing a constitution, mean by the term "Almighty God"? It certainly does not mean Jupiter, nor Neptune, nor Gambrinus, nor some other distinguished person, nor a great warrior, nor a great patriot, no a great statesman.

It is clear that this declaration recognizes a divine, super-human Supreme Being, and recognizes His right, will and supreme authority as lawgiver and ruler over the civil affairs of our state.

The morality as revealed, at least in the law of Moses, so far as the general principles of civil government are concerned, is clearly intended for all time, and is the code of morality set out in the law as revealed to Moses, and is a fundamental principle now as it was then.

This fundamental principle is back of the constitution and, in fact, governs the constitution. There are some things which the people cannot do by a constitutional enactment; for instance, they cannot bargain away the public morals, the public health or the public peace.

In the case of Stone vs. Mississippi, 101 U. S., 814, the Court said: "No legislature can bargain away the public morals or the public health or the public peace. The people themselves cannot do it."

When the Supreme Court of the United States says that the Legislature cannot bargain away these inalienable rights, it says also that the people themselves cannot do it. This expression concerning the people can have no other meaning than that they could not do it by a constitutional provision.

CHAPTER XI.

A Definite Standard of Morality.

SHELDON, Amos, A. M., Professor of Jurisprudence in the University of London, very high authority on any subject which he touches, from whom I have hereinbefore quoted, in a book entitled "A Systematic View of the Science of Jurisprudence", on page 516, says: "There exists somewhere a true and common canon or standard of action, inflexible in itself, and yet, withal, admitting of an easy adjustment and the most exquisite modulations for all members of society, which, the more habitually each member adopts, the vaster is the expansion of which his own nature is capable, and the less is the chance of the need of interruption to others; and which the more habitually all men adopt, the more freely and harmoniously the general machinery of social intercourse works.

"This canon or standard of action is hard, indeed, to discover, and particular societies may spend long ages in unavailing efforts to discover. * * * * This canon or standard of ac-

tion, including here, under the term of 'action,' all the thoughts and feelings that give it life and warmth, is absolute morality. It is the only visible image of the mechanical scaffolding of this, that is designated by the phrase 'National law'."

This distinguished author closes his work as follows: "It is not, then, in law nor in government that hope must be placed for the direct culture of a nation's vitality. It is in moral and spiritual efforts, whether expressed in salutary and silent influences or in highly systematized organizations. * * * * In a word, it is to these direct inspirers of human virtue and energy that law itself must turn in order to find at hand a race of citizens whose dearest concern will be to obey, to cherish and to reform it."

Smith on "Rights and Law", p. 44, Section 43: "Hence it is that, while moral philosophy has furnished a battleground for conflicting theories since the dawn of philosophy, there has always been, at least among civilized nations, a substantial agreement as to the principles of morality. Thus, no one can contemplate the crime of murder without disapprobation; or, to refer to less extreme cases, there are none who will deny the obligation of returning a deposit or of compensating for an injury or of repaying a loan. For these propositions are universally admitted, and, indeed,

by common consent, furnish the crucial test by which all of the theories of moral philosophy are judged, the partisans of all striving to show that their respective theories account for the common moral convictions of mankind."

Section 44: "The jurist therefore, is not concerned with the conflicting theories of moral philosophy, but with morality only, and with that only so far as it treats of rights. It is, therefore, immaterial to the validity of our reasoning what theory we may adopt on this point, provided we assume the reality of moral distinctions and the possibility of perceiving them; the former of which is attested by the common consciousness, and the latter by the common experience, of mankind, and both of which are necessarily assumed in all theories of morality, properly so called."

Note on p. 45: "Moral truths, considered in themselves, have no less certainty than mathematical truths. The idea of a deposit being given, I ask whether the idea of faithfully keeping it is not necessarily attached to it, as to the idea of a triangle is attached the idea that its three angles are equal to two right angles. You may withhold a deposit, but, in withholding it, do not believe that you change the nature of things, nor that you make it possible for a deposit to become property.

"These two ideas exclude each other. You

have only a false semblance of property, and all the effects of passion, all the sophism of interest, will not reverse the essential difference. This is the reason why moral truth is so troublesome; it is because, like all truths, it is what it is, and does not bend to any caprice."

This is the same morality referred to in the constitution of Indiana, which is enjoined upon the Legislature and civil government; the same which is referred to in the law of God and understood by the common conscience. Morality is a sound fundamental principle, safe to be followed in letter and spirit, and disastrous to be departed from.

The Supreme Court of the United States, in the case of Baltimore & Potomac Railway Company vs. Fifth Baptist Church, etc., 108 U. S., 317, as a conclusion reached upon a somewhat lengthy consideration of the legal principles involved in the case, declared that "the great principle of common law, is equally the teaching of Christian morality."

CHAPTER XII.

The Law Grows.

AS has been said before, legal principles are fixed. They are the same now as they were when Caesar crossed the Rubicon. But while this is true, it often happens that the scales of jutsice are not held sufficiently steady to exactly weigh civil conduct in accordance therewith. In other words, it often happens that courts of justice, like merchants, give short weight. There will never be any change in these principles. Courts make decisions, afterward modify, criticise, and overrule the same, in their effort to properly apply legal principles to given questions. Legislative bodies are constantly acting, not upon new principles, but upon the necessity of applying old principles by new methods to matters of emergency, and thereby the law grows through legilation. It grows also in spite of legislation, even to the extent of annulling and setting aside legislative acts. The law grows with the growth of general intelligence and public necessity. What was the law ten years ago, as

interpreted by the courts at that time, may not be the law today, though no legislation has interposed, and no decision of a court has in fact been made. It often becomes apparent, upon some sudden light being thrown upon the matter of conduct or business or social enterprise, that courts are constrained to render decisions which attract wide attention because of public interest in the questions involved, and the new application of old legal principles. This is the field where erudition and judicial minds exhibit distinguished qualities, gain renown, and the work of courts is seen to the best advantage. I can present this proposition best by illustration.

A native was captured on the coast of Africa, and brought to Virginia and sold as a slave. His name was James Somerset. Charles Stewart become his owner. In 1770 Stewart took his slave with him to England as a body servant. While there, the slave became influenced by the teaching and education of persons who declared that a slave could not be legally held in England. He refused to obey his master and denied the relationship of master and slave. He was seized, put in chains, placed on board a ship to be sent to Jamaica. Before the ship had sailed Thomas Watkins, Elizabeth Cady, and John Marlow, three Quakers, made an affidavit in the court of the

King's Bench, the highest court in England, that Somerset was unlawfully imprisoned. A writ of habeas corpus was issued against the ship's captain and the master, commanding them to produce the body of the slave in court. These persons, in answer to the writ, stated the facts, as they claimed them to be, of the relationship of master and slave and the insubordination. The legal questions involved were argued by very able counsel on each side before that high court, and the case was held under consideration for about a year and a half. The court went so far as to suggest to the master that it would be better that the case should be disposed of without pressing it to a decision, and even suggested that it would be better that this slave should be released than that the property in all the slaves in England should be jeopardized. However, the master could not be made to believe, even by the unusual and remarkably suggestive statement of the court, that it could be possible that the court could decide against him and his rights to property in and control of the slave. For more than fifty years slavery had been sanctioned in England by judicial decisions and public recognition. During that period Lords Harwick, Talbott, and York, at different times, had decided that slavery was a legal institution. For about thirty years members of the

Quaker society, and finally the body of that society, had declared against the institution of slavery as inhuman, immoral, ungodly, and unlawful. Other religious teachers and persons had been crying out against the institution. At the time when these legal proceedings were had, public sentiment against the institution, because of its immorality, had become aroused. It was argued on behalf of the master that the law upon this question was settled by the judicial decisions made at different times and of long standing, and that public acquiescence, public necessity, and public policy demanded the maintenance of the institution. The consequences of a decision against the master were portrayed in the most alarming expressions, and predictions were made of the most dire consequences to commerce, business, social, and domestic relations, if this long-settled order of things and legal status should be disturbed. The influence of the wealthy, of royalty, great business enterprises, political and social interests, were arrayed with the master and against the slave. So strong was the showing made in these regards that the court seems to have been seriously affected thereby. Lord Mansfield, chief justice of that court, perhaps the most fearless man who ever sat on the King's Bench in England, showed his apprehension when he contemplated the conse-

quences of a decision and, perhaps the only time in all his history, sought to avoid rendering the judgment of the court. In the argument of the counsel on behalf of the slave, one of them, speaking of the growth of public sentiment upon this subject, said, "Upon this subject the air of England has been clearing since the reign of Elizabeth."

Every precedent and decision that could be cited in the case was in favor of the master. It was a fact, entitled to very great influence in the case, that the public had sanctioned the institution of slavery and decisions in its favor by acquiescence for so long a period. In behalf of the slave there was not a precedent. In his interest it was asked that the settled order of things for this long period should be broken up, that more than fifteen thousand slaves in England, those in Ireland, more than one hundred and sixty-six thousand in Jamaica, should be liberated by a sudden decision of that high court upon a legal proposition, which had as its sole foundation the claim that the institution of slavery was illegal, because it was inhuman and immoral in its very nature and results and could not be made lawful by any decision of the courts or by any acquiescence and sanction of the public, however numerous these decisions and however long standing had been the public acquiescence.

The attorneys for that black man appealed to the principles as presented in the Scriptures, the Christian religion, and by religious teachers and common humanity. There is no other case like this, ancient or modern, before a judicial tribunal in which what may be termed the "cold law" alone was clearly and fully presented on one side and only the hot blood of moral principles presented on the other. On behalf of the master counsel could read from law books, could appeal to the teaching of law schools, and could cite the precedent of history.

On behalf of the slave there was no voice from the law; there were no law books. The court held the case under consideration until ample time was given to consider it from a legal standpoint and from a moral standpoint. The year and a half when the case was before the court was a period in which the great legal principles of morality were at work in the government. The business, social, and financial interests of the English government were excited on account of the question as to whether the case in court should be decided for the master or for the liberty of the black man. There, before that court, was the master, surrounded by such a powerful influence as perhaps no litigation in that highest court had ever presented. There was the black man with

his claims, supported only by the disinterested and benevolent zeal of Christian sentiment. The day came when the judges were on the judgment seat and the master and the slave were brought before them, and the judgment was pronounced. It looks now, as it looked then, a very unequal and unpromising struggle on behalf of the slave. It has been said of Lord Mansfield, who delivered the decision of the court in this case, that he decided all cases with a clear head but a cold heart. In this case, however, he seemed to have maintained his reputation for a clear head, but the evidence of a warm heart is also apparent. I quote this decision in part, sufficient to present in the most concise way its substance: "The state of slavery is of such a nature that it is impossible of being introduced on any reason, moral or political. . . . The setting fourteen thousand or fifteen thousand men at once free, loose, by a solemn opinion is much disagreeable in the effects it threatens. . . . . If the parties will have judgment, **fiat justitia, ruat caelum** (let justice be done, whatever may be the consequence). Fifty pounds a head may not be a high price; then a loss follows to the proprietors of above seven hundred thousand pounds, sterling. How would the law stand with respect to their settlement—wages? How many actions for any

slight coercion by the masters? We cannot in any of these points direct the law. The law must rule us. In these particulars it may be matter of mighty consideration what provisions are made or set by law. Mr. Stuart may end the question by discharging or giving freedom to the Negro. I did think at first to put the matter to a more solemn way of argument. But if my brothers agree there seems no occasion. I do not imagine, after the point has been discussed on both sides so extremely well, any new light could be thrown upon the subject. If the parties choose to refer it to the Common Pleas they can give them that satisfaction whenever they think of it. An application to Parliament, if the merchants think the question of great commercial concern, is the best and perhaps the only method of settling the point for the future. . . . Whatever inconveniences therefore may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black man must be discharged." (Lofft's Report. Second Case). This decision was rendered in 1772, and settled the law upon that subject. The substance and effect of that decision was that there was no legal right of ownership, or to hold, or to control a human being as property anywhere within the jurisdiction of that Court. The jurisdiction of that

Court was broad as the dominion of the English government.

The same Court afterwards declared that, if an Act of Parliament were to endorse the institution of slavery, the Court would be bound to disregard it.

The combined influence of the aristocracy, greed, wealth and depravity was powerful enough to suppress the law as declared by the Court, but could not suppress agitation upon the subject. On account of the growing agitation and public sentiment, an Act of Parliament was passed in 1833, abolishing the African slave trade and putting an end to the condition of slavery within the boundaries of the English government as a matter of statute.

Believers in the Scriptures accept the account of divine deliverance of Joseph from slavery and prison and his promotion and rulership in Egypt, and the deliverance of the three Hebrews from the burning fire, and Daniel from the lions' den. In each of these cases special divine interposition is claimed.

In the case of Charles Somerset, the slave, the decision was not in accordance with the letter or spirit of the schools of law, law books, decided cases, or intellectual process of that day. A remarkable overpowering influence from some source came upon the mind of the court—a court never surpassed in the world's

history for intelligence. Advancing civilization threw a greater light upon that question, and thereby revealed what courts had never been able to see before.

We are not driven to the necessity of claiming special divine interposition in behalf of the slave in this case. The great principle of public morality is strong enough, has in it such overpowering influence as that it is sufficient for any great emergency like this, when it has due course. Doctrines recognized and declared to be the law in that case are identical with the doctrine taught by Christian teachers, by the Quaker Church, George Whitfield, William Wilberforce, John Wesley, and many other great leaders, and were in accordance with the prayers and urgency of devout people, though they stood in conflict with what were recognized as legal precedents. Where did these people get these doctrines which they had succeeded in enforcing in such a wonderful degree and with such amazing success? I need go no further in my claim in this case than that the secret of this most renowned decision, the consequence of which will never end, was simply the application of the principles of sound morality to a question in civil courts. The court, in this decision, made the doctrines as taught by these religious teachers the law of the land, as against the doctrines

as taught by the schools of law, the law books, precedents, and decisions. That decision set free all the slaves within the jurisdiction of that court, and a Christian civilization so adjusted all the affairs, public and private, that the consequences never made a jar. More than a century has gone by since that decision was rendered. The consequences have fallen like benedictions in the pathways of mankind during all this period. That decision, as a precedent, has gone like a divine influence into the affairs of men. The judges who rendered it have gone to their reward, and in the great day of final judgment need not fear condemnation for that act.

In 1807 the Indiana Territorial Legislature chartered the Vincennes University, at Vincennes, Indiana. In that charter there was a section as follows: "And be it further enacted, That for the support of the aforesaid institution, and for the purpose of procuring a library and the necessary philosophical and experimental apparatus, agreeably to the eighth section of this law, there shall be raised a sum not exceeding twenty thousand dollars, by a lottery, to be carried into operation as speedily as may be after the passage of this act, and that the trustees of the said university shall appoint five discreet persons, either of their body or other persons, to be managers

of the said lottery, each of whom shall give security, to be approved of by said trustees, in such sum as they shall direct, conditioned for the faithful discharge of the duty required of said managers, and the said managers shall have power to adopt such schemes as they may deem proper to sell the said tickets and to superintend the drawing of the same and the payment of the prizes," etc. The present Constitution of Indiana, adopted in 1851, prohibits lotteries. The Supreme Court of Indiana, in 1879, in the case of Kellum vs. The State, 66 Indiana, 588, held that under the charter to the Vincennes University the lottery provision had become a vested right and could not be disturbed even by a constitutional provision. This decision attracted wide attention in Indiana, and was the cause of much public discussion. The people of Indiana had become much aroused upon the question of the morality of the lottery business. Churches were declaring in the form of resolutions and other action against the business. The better class of people were antagonizing it. There was a great and rapid growth of public sentiment upon this question. In 1883, in the case of the State vs Woodard, 89 Indiana Reports, 110, the question of the legality of the lottery provisions in the Vincennes charter, the identical question that had been before the court in

1879 was again presented, and the court was again called upon to consider the question. No act of the Legislature had intervened since the former decision. In the interval between the former decision and the presentation of the question again the decision of the Supreme Court of the United States, in the case of Stone vs. Mississippi, 101 U. S. Reports, 814, had been rendered, in which the court held that the lottery business was an immoral business and could have no vested rights. When the Supreme Court of Indiana looked the second time at the question they saw in it the principle involved, what the court did not see in the former decision, not because there was any new principle involved, but because by the reason of the growth of public sentiment and legal knowledge the court was enabled to see what it was unable to see before in the same question. In the latter decision the court disregarded all the precedents which it had cited, all the argument which it had made, all its own reasoning in the former case, overruled its former decision, and decided that the lottery provision in the Vincennes University was void, and that the lottery business could not be conducted by the trustees or anyone else for that institution, because of the immorality of the business itself.

At the close of the opinion of the court in

this last case in Indiana, which was written by Judge Wordon, the reporter adds the following note: "This was the last opinion written by Hon. James B. Wordon." Judge Wordon was one of the judges who had concurred in the opinion of that court four years before expressing exactly the contrary opinion.

Slavery had existed in the United States, had been recognized by the courts, including the Supreme Court of the United States, as a lawful institution for more than two hundred and fifty years. It was so firmly established and so influential that men in public positions hazarded their personal safety by even suggesting that it ought to be legally interferred with. There was no prospect in the least of taking any step whatever to disturb it as an institution. The Supreme Court of the United States even had become so dominated and subjugated by the influences of that institution that for some time it disregarded every settled and fixed fundamental principle of law and morality, and in the face of the great precedent in the case of Somerset vs. Stewart, to which I have referred, decided by the King's Bench in England, by which slavery had been abolished, and decided that the black man had no rights that the white man was bound to respect. The decision in the English case fell like a benediction, and has

gone into every civilized government with its great influence, and shall shine brighter and brighter forever.

The case of Dred Scott vs. John F. A. Stanford, decided in 1857, more than eighty years after the English case, by the Supreme Court of the United States, going to the extreme against the rights of the colored man and in favor of the inhuman and immoral institution of slavery, aroused the antagonism and warlike spirit of a large class of people, and was one of the greatest factors in producing civil war in the United States.

Notwithstanding this decision of our highest court, notwithstanding the fact that no legislation interfering with the existence of slavery was possible in the United States, notwithstanding the claim, and general acquiescence therein, that the government of the United States could not interfere with the institution of slavery in the States where it existed by legislation or otherwise, yet there came a day when the education of the people of the nation, under the excitement of those stirring days, had so rapidly advanced that under the law of public necessity Abraham Lincoln, by one stroke, as chief executive of the nation, could and did destroy that institution, as a war necessity, for the preservation of the government. The growth in the

comprehension of the law concerning that institution from 1861 to 1863 was greater than the growth of education upon that subject for the two hundred and fifty years previous.

Ten years after the close of the civil war one of the most distinguished writers and statesmen in the nation prepared and caused to be published any article, in which he asserted that slavery, in fact, had never been abolished in the United States, because Abraham Lincoln, as president, had no authority for issuing the Emancipation Proclamation, and that the proclamation was void. The article, however, only served to remind the people of what had once been the public impression, and how great had been the growth of education upon that subject, and caused a smile at the temerity of the writer.

A case was recently presented to the Supreme Court of Indiana in which a widow had brought suit against a saloon keeper and his landlord for damages done to the widow's property, and the enjoyment of her home, by the establishment and maintenance of a saloon adjoining her residence. The defendants pleaded a license under the law of the State authorizing the saloon business. The license law of the State of Indiana made no exception as to locality, and the saloonkeeper flaunted his license in the face of the widow with the

utmost confidence that she was powerless and without relief under the law. This particular question had never before been presented to any court. Our Supreme Court, in its first decision upon that question, held that the widow was not entitled to any relief. A petition for rehearing was presented, considered, and sustained. The court having thus opened the case for reconsideration gave to the question presented remarkable and very unusual attention, and finally decided; first, that the widow had a right of action; second, that the saloon keeper and also his landlord, who had leased the property for saloon purposes, were each liable for damages; third, that the license was no protection to the business in that locality; fourth, that an orderly saloon in an orderly residence neighborhood is, per se, a nuisance. In reaching these conclusions the court was compelled to disregard and annul largely the letter of the license law; to declare that no statute could authorize by its provisions or give its protection to any act or business such as the business in the case presented; that the saloon business is offensive to good morals and sound sentiment. This decision is without precedent upon the issue presented. The decision is a departure from the view of the law and of that business as heretofore taken. This decision most forci-

bly illustrates the growth in the view of the law upon this subject. The legislature of Indiana can grant no relief from the effect and consequences of this decision, for the reason that rights of property and enjoyment of the same as recognized in the decision cannot be interfered with without compensation. See Haggart et al vs. Stehlin et al, 137 Ind., 43.

We have had illustration of the growth of the law exhibited in regard to prize fighting.

In January, 1894, a prize fight between James J. Corbett and Charles Mitchell was duly advertised to be given in the State of Florida. The governor called out the militia to prevent the immoral and demoralizing exhibition. A court of justice, upon application, issued an injunction against the use of the militia for the purpose for which it had been called, declaring that there was no law in Florida against prize fighting, and thereby prevented all interference on the part of the State troops and the police auhorities. The Governor of Texas, on being informed by his attorney general in the month of October, 1895, that there was no law in Texas to prevent prize fighting, assembled the Legislature of the State to meet the emergency, and within three hours after that body was organized a law had been passed and signed by the governor forbidding such brutal exhibitions.

Within less than one month after this enactment in Texas, in response to the public demand of advanced civilization, when the same exhibition was undertaken to be given in the State of Arkansas, the chief executive, his attorney general, and the court decided upon, and put in execution, judicial process, and prevented the same, not upon an act of the Legislature, but upon a construction of the law as it had existed ever since the organization of the State, and provisions almost identical with those that had long existed in the States of Florida and Texas, the provisions of which were ample to have met the emergency in either of these States, if properly construed, to prevent a prize fight.

The force of public opposition has thrown such a light upon the real character and demoralizing influences of prize fighting that the law, as it is, has grown to meet the emergency, until prize fighting is clearly unlawful in every State in the Union. National and State Constitutions grow with the experience and enlightenment of men. The word "morality" itself is a thing of growth. This word means much more than it once did, and some day will mean a vast deal more to us than it does now. Growth in the comprehension of no word, perhaps, has broadened more in recent years than the word "cruelty." Its scope now

covers many subjects and a wide field. There was a time when a man could lawfully whip his wife in moderation, beat his children to the limits of brutality, and kill his slave or animals with impunity, without being charged with cruelty. We have now reached the point in our comprehension of this word where it is dangerous for a man to kick his own dog, fail to feed his own horse, or even threaten to strike his own wife. There was a time when the word "cruelty" had its own particular and narrow meaning. Now it is merely one of the branches of immorality. A cruel man is a bad man, and a bad man cannot be a moral man.

I have said the law grows. I have made this declaration in this form for convenience and for the purpose of making myself more easily understood. Strictly speaking, the law does not grow, but the comprehension of legal principles does grow. Principles as set forth in the Ten Commandments will be no greater in the day of final judgment than when they were written down in the presence of Moses on tables of stone, but every generation will learn something new concerning these principles and will see in them what has not been seen before. The history and growth in the comprehension and meaning of the word "morality" is a most fascinating study. Nothing short of the historic evolution of morality for

two thousand years can furnish full comprehension of its meaning. The volumes that have been written upon this subject would make such a weight as few men could carry at one time. The word "morality," as used in the Constitution of Indiana and the Constitutions of other States and in the judicial decisions of other States, must be held by faithful judges to contemplate **all that ever can be found at any time by the most profound research under the most brilliant light within its boundaries.** Civil law is not founded upon any military, martial, business, or social ideas. The abiding and fundamental principle in civil law is morality, with its honesty, fair dealing, and justice to all men. The historic method of explanation of legal principles which is the method accepted by courts that are well informed on legal principles has narrowed and changed the meaning of many words, and even dropped some words and whole expressions out of definitions, but this method has, for three thousand years, steadily, but never as rapidly as within recent years, developed, enlarged, and strengthened the word "morality." I venture to prophesy for the future that the word "morality" will respond to the inquiries of faithful courts by the revelation of many beautiful and most important ideas heretofore and now unseen. Writers on all branches of

law well know that the individual statements of legal propositions have little weight. Therefore it is not only the most common custom, but an absolute necessity, that any writer should fortify his statements by quotations from good authority. I have heretofore quoted from Austin's works on jurisprudence, because he is perhaps the best authority on historic development of legal principles, and his high authority is universally recognized by the legal profession.

I feel that I can do no better in closing this chapter than to quote at some length from this high authority. In doing so let me call special attention to the fact that the author, in what I shall quote, is not merely lecturing upon the subject, but is considering, from a legal standpoint, the subject of "morality." He uses the word "ethics" and "ethical," meaning by these words exactly what was then and is now meant by the word "morality." This is shown in his work, and also in quotations made from him in another chapter of this work.

In Vol. I, pp. 137-138, this author says:

"If the elements of ethical science were widely diffused, the science would advance with proportionate rapidity.

"If the minds of the many were informed and invigorated, their coarse and sordid pleasures and their stupid indifference about

knowledge would be supplanted by refined amusements and by liberal curiosity; a numerous body of recruits from the lower of the middle classes, and even from the higher classes of the working people, would thicken the slender ranks of the reading and reflecting public, the public which occupies its leisure with letters, science, and philosophy; whose opinion determines the success or failure of books, and whose notice and favor are naturally courted by the writers.

"And until that public shall be much extended, shall embrace a considerable portion of the middle and working people, the science or ethics, with all the various sciences which are nearly related to ethics, will advance slowly.

"It was the opinion of Mr. Locke, and I fully concur in the opinion, that there is no peculiar uncertainty in the **subject** or **matter** of these sciences; that the great and extraordinary difficulties by which their advancement is impeded are **intrinsic,** are opposed by sinister interests or by prejudices which are the offspring of such interests; that if they who seek or affect to seek the truth would pursue it with obstinate application and with due **'indifferency'** they might frequently hit upon the object which they profess to look for. Now, few of them will pursue it with this requisite 'in-

differacy' or impartiality so long as the bulk of the public which determines the fate of their labors shall continue to be formed from the classes which are elevated by rank or opulence, and from the peculiar professions or callings which are distinguished by the name of 'liberal.' In the science of ethics, and in all the various sciences which are nearly related to ethics, your only sure guide is general utility. If thinkers and writers would stick to it honestly and closely they would frequently enrich these sciences with additional truths or would do them good service by weeding them of nonsense and error. But since the peculiar interests of particular and narrow classes are always somewhat adverse to the interests of the great majority, it is hardly expected of writers whose reputation depends upon such classes that they should fearlessly tread the path which is indicated by the general well-being."

"The indefferency in the pursuit of truth which is so earnestly inculcated by Mr. Locke is hardly to be expected of writers who occupy so base a position; knowing that a fraction of the community can make or mar their reputation, they unconsciously or purposely accommodate their conclusions to the prejudices of that narrower public, or, to borrow the expressive language of the greatest and best of

philosophers, they begin with espousing the well-endowed opinions in fashion, and then seek arguments to show their beauty or to varnish or disguise their deformity."

Also in the same volume, at pages 141 to 143:

"This patience in investigation, this distinctness and accuracy of method, this freedom and 'indefferency' in the pursuit of the useful and the true, would thoroughly dispel the obscurity by which the science is clouded, and would clear it of most of its uncertainties. The wish, the hope, the prediction of Mr. Locke would in time be accomplished, and 'ethics' would rank with the sciences which are capable of demonstration.. The adepts in ethical as well as in mathematical science would certainly agree in their results, and as the jar of their conclusions gradually subsided a body of doctrine and authority to which the multitude might trust would emerge from the existing chaos. The direct examination of the multitude would only extend to the elements and to the easier though more momentous of the derivative practical truths. But none of their opinions would be adopted blindly, nor would any of their opinions be obnoxious to groundless and capricious change. Though most or many of their opinions would still be taken from authority, the authority to which

they would trust might satisfy the most scrupulous reason. **In the unanimous or general consent of numerous and impartial inquirers** they would find that mark of trustworthiness which justifies reliance on authority wherever we are debarred from the opportunity of examining the evidence for ourselves.

With regard, then, to the perplexing difficulty which I am trying to solve or extenuate the case stands thus:

"If utility be the proximate test of positive law and morality, it is simply impossible that positive law and morality should be free from defects and errors. Or (adopting a different though exactly equivalent expression), if the principle of general utility be our guide to the divine commands, it is impossible that the rules of conduct actually obtaining among mankind should accord completely and correctly with the laws established by the Deity. The index to His will is imperfect and uncertain. His laws are signified obscurely to those upon whom they are binding, and are subject to inevitable and involuntary misconstruction.

"For, **first**, positive law and morality, fashioned on the principle of utility, are gotten by observation and induction from the tendencies of human actions; from what can be known or conjectured, by means of observation and induction, of their uniform or custo-

mary effects on the general happiness or good. Consequently till these actions shall be marked and classed with perfect completeness, and their efforts observed and ascertained with similar completeness, positive law and morality, fashioned on the principle of utility, must be more or less defective and more or less erroneous. And these actions being infinitely various and their effect being infinitely diversified, the work of classing them completely and of collecting their effects completely transcends the limited faculties of created and finite beings. As the experience of mankind enlarges, as they observe more extensively and accurately and reason more clearly and precisely, they may gradually mend the defects of their legal and moral rules, and may gradually clear their rules from the errors and nonsense of their predecessors. But though they may constantly approach, they certainly will never attain a faultless system of ethics, to a system perfectly in unison with the dictates of general utility, and therefore perfectly in unison with the benevolent wishes of the Deity.

"And, **secondly,** if utility be the proximate test of positive law and morality, the defects and errors of popular or vulgar ethics will scarcely admit of a remedy. For if ethical truth be a matter of science, and not of im-

mediate consciousness, most of the ethical maxims which govern the sentiments of the multitude must be taken without examination from human authority. And where is the human authority upon which they can safely rely? Where is the human authority bearing such marks of trustworthiness that the ignorant may hang their faith upon it with reasonable assurance? Reviewing the various ages and the various nations of the world, reviewing the various sects which have divided the opinions of mankind, we find conflicting maxims taught with equal confidence and received with equal docility. We find the guides of the multitude moved by sinister interests or by prejudices which are the offsprings of such interests. We find them stifling inquiry, according to the measure of their means; upholding with fire and sword or with sophistry, declamation, and calumny the theological and ethical dogmas which they impose upon their prostrate disciples. Such is the difficulty. The only solution of which this difficult seems to admit is suggested by the remarks which I have already submitted to your attention, and which I will not repeat in an inverted and compendious form.

"In the first place, the diffusion of ethical science among the great bulk of mankind will gradually remove the obstacles which prevent

or retard its advancement. The field of human conduct being infinite or immense, it is impossible that human understanding should embrace and explore it completely. But by the general diffusion of knowledge among the great bulk of mankind, by the impulse and the direction which the diffusion will give to inquiry, many of the defects and errors in existing law and immorality will in time be supplied and corrected.

"Secondly, though the many must trust to authority for a number of subordinate truths, they are, competent to examine the elements which are the groundwork of the science of ethics, and to infer the more momentous of the derivative practical consequences.

And, thirdly, as the science of ethics advances and is cleared of obscurity and uncertainties, they who are debarred of opportunities of examining the science extensively will find an authority whereon they may rationally rely in the unanimous or general agreement of searching and impartial inquiries."

Again, on pages 177 to 180:

"The science of ethics (or, in the language of Mr. Bentham, the science of deontology) may be defined in the following manner: It affects to determine the test of positive law and morality, or it affects to determine the principles whereon they must be fashioned in

order that they may merit approbation. In other words, it affects to expound them as they should be; or it affects to expond them as they ought to be; or it affects to expound them as they would be if they were good or worthy of praise; or it affects to expond them as they would be if they conformed to an assumed measure. The science of ethics (or simply and briefly ethics) consists of two departments, one relating especially to positive law, the other relating to positive morality. The department which relates specially to positive law is commonly styled the **science of legislation,** or, simply and briefly, **legislation.** The department, which relates specially to positive morality is commonly styled the **science of morals,** or, simply and briefly, **morals.**

"The foregoing attempt to define the science of ethics naturally leads me to offer the following explanatory remark. When we say that a human law is good or bad, or is worthy of praise or blame, or is what it should be, or is what it ought to be, or what it ought not to be, we mean (unless we intimate our mere liking or aversion) this: That the law agrees with or differs from a something to which we tacitly refer it as a measure or test. For example, according to either of the hypotheses which I stated in preceding lectures, a human law is good or bad as it agrees or does not

agree with the law of God; that is to say, with the law of God as indicated by the principle of utility of with the law of God as indicated by the moral sense. To the adherent of the theory of utility a human law is good if it be generally useful, and a human law is bad if it be generally pernicious. For, in his opinion it is consonant or not with the law of God inasmuch as it is consonant or not with the principles of general utility. To the adherent of the hypothesis of a moral sense a human law is good if he likes it, he knows not why; and a human law is bad if he hates it, he knows not wherefore. For in his opinion his inexplicable feeling of liking or aversion shows that the human law pleases or offends the Deity.

"To the atheist a human law is good if it be generally useful, and a human law is bad if it be generally pernicious. For the principle of general utility would serve as a measure or test, although it were not an index to an ulterior measure or test. But if he call the law a good one without believing it useful, or if he call the law a bad one without believing it pernicious, the atheist merely intimates his mere liking or aversion. For unless it be thought an index to the law set by the Deity an inexplicable feeling of approbation or disapprobation can hardly be considered a measure

or test. And in the opinion of the atheist there is no law of God which his inexplicable feeling can point at. To the believer in supposed revelation a human law is good or bad as it agrees with or differs from the terms wherein the relation is expressed.

"In short, the goodness or badness of a human law is a phrase of relative or varying import. A law which is good to one man is bad to another in case they tacitly refer it to different or adverse tests. The divine laws may be styled good in the sense with which the atheist may apply the epithet to human. We may style them good or worthy of praise, inasmuch as they agree with utility considered as an ultimate test. And this is the only meaning with which we can apply the epithet to the laws of God. Unless we refer them to utility, considered as an ultimate test, we have no test by which we can try them. To say that they are good because they are set by the Deity is to say that they are good as measured or tried by themselves. But to say this is to talk absurdly; for every object which is measured or every object which is brought to a test is compared with a given object other than itself. If the laws set by the Deity were not generally useful, or if they did not promote the general happiness of His creatures, or if their great Author were not

wise and benevolent, they would not be good or worthy of praise, but were devilish and worthy of execration.

"Before I conclude the present digression I must submit this further remark to the attention of the reader.

"I have intimated in the course of this digression that the phrase **law of nature** and the phrase **natural law** often signifies the law of God.

"Natural law as thus understood and the **natural law** which I mentioned in my fourth lecture are separate expressions. The **natural law** which I there mentioned is a portion of positive law and positive morality. It consists of the human rules, legal and moral, which have obtained at all times and obtained at all places.

"According to the compound hypothesis which I mentioned in my fourth lecture, these human rules, legal and moral, have been fashioned on the law of God as indicated by the **moral sense.** Or, adopting the language of the classical Roman jurists, these human laws, legal and moral, have been fashioned on the divine law as known by **natural reason.**

"But besides the human rules which have obtained with all mankind there are human rules, legal and moral, which have been limited to peculiar times or limited to peculiar places.

"Now, according to the compound hypothesis which I mentioned in my fourth lecture, these last have not been fashioned on the law of God, or have been fashioned on the law of God as conjectured by the light of utility.

"Being fashioned by the law of God as shown by an infallible guide, human rules of the first class are styled the **law of nature**; for they are not of human position purely or simply, but are laws of God or nature clothed with human sanctions. As obtaining at all times and obtaining at all places, they are styled by the classical jurists **jus gentium** or **jus omnium gentium** (the law of nations or the law of all nations)." ... ...

In a book on "Right and Law" by George Smith, it is well said, Section 363: "The fact that its principles are, and for a long time have been, recognized and observed by the courts—some of them for ages—is not inconsistent with the proposition that they still continue to be principles of natural right; but, on the contrary, constitutes the most conclusive proof of their character as such. For it may be stated as a universal proposition that no principle can even endure in the law, unless it is a true principle of right."

Section 366: "Hence, though errors have occurred and false principles have thus become established, they have never endured,

but have ultimately been, or will be, eradicated; and hence jus has constantly approximated to perfection, and, as it now stands, it is more clearly identical with natural right than ever before; or what is the same thing or may perhaps be more readily admitted, the rights of men are now more fully recognized. and in theory protected, than at any former time. Nor can there be a greater error than to suppose—as it has been too common to suppose—that the logical and scientific method which has effected such great results, has become no longer applicable to the law; for the law is still far from being perfect, especially in form, and we must in the future look to the same method for its perfection and for the ultimate realization of justice and right on earth."

Page 292 (12, 13, 14, 15 and 16): "It has been the constant labor of judges, through all changes of society, to keep the common law consistent with reason and with itself."

Sir James Mackintosh, cited, Rams. "Legal Documents," p. 26: Quicquid agant homines is the business of the courts, and, as the usages of society alter, the law must adapt itself to the various situations of mankind.

"The common law, which works itself pure by rules drawn from the foundations of justice, is superior to an act of Parliament."

Lord Mansfield, cited in Austin's Jur. 686: "The law of England would be an absurd science, were it founded upon precedent only."

Lord Mansfield, cited by Kent Com. 477: "If the ethical science were widely diffused, the science would advance with proportionate rapidity. If the minds of the many were informed and invigorated, their coarse and sordid pleasure and their stupid indifference about knowledge, would be supplanted by refined amusements and by liberal curiosity; a numerous body of recruits from the lower or the middle classes, and even from the higher classes of the working people, would thicken the slender ranks of the reading and reflecting public, the public which occupies its leisure with letters, science and philosophy; whose opinion determines the success or failure of books, and whose notice and favor are naturally courted by the writers.

"And, until that public shall be much extended, shall embrace a considerable portion of the middle and working people, the science of ethics, with all the various sciences which are nearly related to ethics, will advance slowly. It was the opinion of Mr. Locke, and I fully concur in the opinion, that there is no peculiar uncertainty in the subject or matter of these sciences, that the great and extraordinary difficulties by which their ad-

vancement is impeded, are intrinsic, are opposed by sinister interests or by prejudices which are the offspring of such interests; that if they who seek, or affect to seek, the truth, would pursue it with obstinate application and with due "indifferency" they might frequently hit upon the object which they profess to look for. Now, few of them will pursue it with this requisite "indifferency" or impartiality, so long as the bulk of the public which determines the fate of their labors shall continue to be formed from the classes which are elevated by rank or opulence, and from the peculiar professions or callings which are distinguished by the name "liberal." In the science of ethics, as in the other varied sciences which are nearly related to ethics," your only sure guide is general utility. If thinkers and writers would stick to it honestly and closely, they would frequently enrich these sciences with additional truths, or would do them good service by weeding them of nonsense and error. But, since the peculiar interests of particular and narrow classes are always somewhat adverse to the interest of the great majority, it is hardly expected of writers, whose reputation depends upon such classes, that they should fearlessly tread the path which is indicated by the general well-being.

"The indifferency in the pursuit of truth, which is so earnestly inculcated by Mr. Locke, is hardly to be expected of writers who occupy so base a position; knowing that a fraction of the community can make or mar their reputation, they unconsciously or purposely accommodate their conclusions to the prejudices of the narrower public, or, to borrow the expressive language of the greatest and best of philosophers, they begin with espousing the well-being opinions in fashion, and then seek arguments to show their beauty or to varnish or disguise their deformity."

Hurtando vs California, 110 U. S. at p. 530 (1883): "It is more consonant to the true philosophy of our historical legal institutions to say that the spirit of personal liberty and individual right, which they embodied, was preserved and developed by a progressive growth and wise adaptation to new circumstances and situations of the forms and processes found fit to give, from time to time, new expression and greater effect to modern ideas of self-government.

"This flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law. Sir James Mackintosh ascribed this principle of development to Magna Charta itself. To use his own language: 'It was a peculiar advantage that

the consequence of its principles were, if we may so speak, only discovered slowly and gradually. It gave out on each occasion only so much of the spirit of liberty and reformation as the circumstances of succeeding generations would safely bear. For almost five centuries it was appealed to as the decisive authority on behalf of the people, though commonly so far only as the necessities of each case demanded.'"

The whole system of common law and equity are growths, as they now stand, and must continue to grow and develop with the growth of public education and intelligence and the increasing demands of civil government. But the common law and equity originated, and have been developed by judicial decisions alone, to meet new conditions and emergencies in civil government. The Supreme Court of Indiana has made decisions concerning the sale of intoxicating liquors, which have since been modified and disregarded. So that our Supreme Court entertains at this time a very different view, as expressed in recent cases, from its declarations in former cases, upon this subject. The Supreme Court of Indiana has often held that the sale of intoxicating liquors by retail was the right of any individual without restraint at common law, the same as any constitutional

right of a citizen to conduct any kind of business, and that the license system contained the only restraints and regulations for such sales of liquor.

The last of such expressions, and perhaps the strongest upon this subject, is in the case of Haggart, et al. vs. Stehlin, 137 Ind. 43, decided in 1893. In this case, the first opinion of the Supreme Court in effect decided that, as the defendant, Stehlin, held a license and the license law was valid, his license was complete protection against a proceeding for damages and injunction by an injured residence owner. The full bench concurred in that opinion.

On a petition for re-hearing, the same judges gave it more careful consideration. And, when they had done that, they set aside their former opinion. In the second and final opinion, notwithstanding the license law makes no exceptions as to localities, in any of its provisions, yet the Court held Stehlin's orderly saloon, in an orderly neighborhood, was not protected by his license.

The Supreme Court of Indiana in 1855 declared the sale of intoxicating liquor was a natural right and on the same plane with dry goods, grocery business, etc., subject only to regulation. This declaration was reaffirmed a number of times by that Court during a period of forty years.

But in the case of the State vs. Gerhardt, 145 Indiana, Special, page 462, after careful consideration, the same court says: "To sell intoxicating liquor at retail is not a natural right to pursue an ordinary calling."

This last decision is a revolution, **in fact a revelation,** upon this subject.

This last decision evidently has come to stay.

CHAPTER XIII.

Evil Must Be Suppressed and Good Promoted.

THE growth of public morality in civil government has been like the advance of an irresistible army. It has been checked and compelled to halt and fight long, desperate, battles, but has never retreated. It has utterly overthrown, crushed and destroyed governments, kings, rulers and people who have opposed its advance. It is persuasive, patient and kind to such as heed warnings, but merciless and relentless to those who will not yield. It will not consent that immorality, or any system or enterprise or business that is immoral or tends to immorality, or has an immoral influence, shall in any way be sanctioned or excused. The institution of slavery, which claimed divine sanction and the authority of divine revelation, which was once accepted by all men, became an institution especially offensive to the advance of morality, and was ultimately destroyed by the decision of the court upon moral principles in England, and by the action of the chief executive in the United States upon the

same ground, and other nations are obeying the same high command and abolishing the institution among their people, so that it is unknown to-day among all civilized people. Gambling, for amusement or business, was once thought to be a mere matter of individual taste and privilege, but when its immorality and bad influence were made to appear it was outlawed everywhere from nation to nation. Once the gladiators furnished entertainment for a multitude of men, women and children by sanction of government and universal consent; but that has gone with the fierce brutality of long ago, and we have so far progressed that prize fighting may now be understood as unlawful in every State in this Union, and is rapidly being driven from the soil of other nations. We have so far progressed in our application of the sensitive demands of morality in this direction that bear baiting, bull fighting, cock fighting, dog fighting, and even rat baiting are all made unlawful.

Wager of battle between disputants over personal matters or property rights was once a legal method of settling questions, but we have now reached the point where dueling, fighting, and even quarreling over matters of dispute are forbidden by law. The lottery business, once taken to be a legitimate business and matter of amusement, so highly regarded in

the United States within the recollection of persons now living as that it was made the means of raising funds for erecting public buildings in the capital city of the nation; was chartered by provision of the Indiana Territorial Legislature in 1807 in the Vincennes University in Indiana, by which a library for that institution of learning was to be secured; was considered proper means for raising money with which to build churches, and furnished entertainments for church socials; but the immoral character, influence, and results of the lottery business became so serious that it was declared by Lord Holt from the King's Bench in England long ago, without any act of Parliament upon the subject, to be unlawful because of its immorality. For the same reason it was always unlawful if the principles of law had been properly applied in the United States. Every State in this nation has finally declared the lottery business to be unlawful, as has the Supreme Court of the United States. It has been hunted down and been driven from our shores, and even from its temporary resting place in the government of Mexico, because of the immorality and bad influence that necessarily followed in its wake. There is one universal, thoroughly settled rule of law in this nation, not founded upon legislation, but older than legislation, often, however, recognized

and supported by legislation, that any business that is immoral, tends to immorality, or results in promoting immorality, is unlawful. It is not only unlawful, but cannot be made lawful by any act of the Legislature, nor long maintained as lawful even by decisions of any court of last resort. There are two chief concerns in civil government which have been established by the States in the Union:

First, to promote morality, and, second, to suppress immorality.

I quote again upon this proposition, Art. 8, Sec. 1, of the present Constitution of Indiana: "Knowledge and learning generally diffused throughout a community being essential to the preservation of free government, it shall be the duty of the General Assembly to encourage by all suitable means, moral intellectual, scientific, and agricultural improvements, and to provide by law for a general and uniform system of common schools, where tuition shall be without charge and equally open to all."

It must be kept in mind that morality is a science; as much so as mathematics, the oldest science known among men. In pursuance of the constitutional provision I have just quoted, the Legislature of Indiana long ago chartered the State Board of Agriculture to encourage the culture of whatever the soil can produce. The Legislature has also established at great

expense, in obedience to this section of the Constitution, a State University for general literary culture, Purdue University for special instruction, State Normal School for preparing teachers, schools for the instruction of the deaf and dumb and blind and the feeble-minded, and a general system of common schools providing for the regulation and licensing of school-teachers. This section is by far the most important section in our Constitution, and the first subject in the section, the chief and greatest subject which the Legislature is commanded to "encourage by all suitable means," is **morality.** Morality is a specific and independent subject in the Constitution, as much as science, agriculture, or education.

This section was taken as a section from our former Constitution, with only two changes of any importance. One of these is that morality is taken from a subordinate position in the former Constitution and given a chief place in the section in our present Constitution, and the subject of education is added.

The Legislature is given the power, and is commanded by this constitutional provision to do anything and everything that may be necessary or required to promote education, and to suppress everything that retards or has a tendency to retard, interfere with, or prevent education . It has the same authority and has the

same command as to the subject of agriculture and scientific information, and has the same authority and has the same command as to the subject of **morality.** The Legislature in the discharge of its duty has carefully provided a public school system with strict requirements as to the qualifications of teachers. If the Legislature were to provide that the schools should teach that the earth is flat, and that the sun literally rises and sets, it will be conceded that such a law would be absolutely void.

The story is told that in an early day in Indiana, long before this constitutional provision and the coming of our common school system, a school-teacher went into one of our country neighborhoods to secure the signatures of parents to an article employing him as a teacher and agreeing to send their children to his school. He was so fortunate as to be admitted to one of those quasi social gatherings so common in an early day in this State, known as wool pickings, where the women of the neighborhood met together to enjoy themselves socially, picking the burs and Spanish needles out of the wool, so that it could be used. He made his business known to the women, and asked those who were heads of families to sign it, and the others to speak to their husbands or fathers about it so that they would be ready when he went around to see

them. He was a fluent talker, and had had much experience in his work, and had made a very favorable impression upon his auditors. He was on the point of taking his departure when one of the women informed him that there had been trouble in that neighborhood with a former teacher on the question whether the earth was round or flat, and that she and her husband would want to know his views on that subject before they signed that article. Another woman showed very clearly that the subject was a very familiar one to her, and that she differed from the first speaker, and demanded that he should announce his views. He saw at once that he had a difficult case on his hands, but his skill was equal to the occasion. Every eye was on him, and they awaited his answer. He answered that he had been educated in both schools and would teach that the earth was round or flat, just as they preferred. After the adoption of this constitutional provision and the legislation in pursuance thereof, that teacher with all the quacks like him took their departure from Indiana. It would not be a pleasant subject for me, a native Hoosier, to dwell upon or consider at great length the condition of Indiana as to illiteracy when our present Constitution was adopted. But I take great pleasure in calling attention to the fact that Indiana has made such progress

under this constitutional provision and her favorable legislation, with her licensed and qualified school-teachers and universities and schools, that no Hoosier need be ashamed of the showing we are now able to make. We have also made commendable progress in agriculture and scientific departments.

I make the statement that we have made less progress in moral science and morality than we have in any other science; much less than in education or agriculture. It will be found, upon investigation, that old methods of teaching have been abandoned, and amazing improvements in methods and in good results have been accomplished with wonderfully important and rapidly growing facilities, conveniences, and capacity for teaching and imparting and acquiring education; old methods of agriculture have been abandoned, and the fields have been cleared of trees, stumps, and stones. Machinery and mechanical improvements have been brought into use to such an extent that a person can hardly comprehend the bettered condition and wonderful advance that has been made upon this subject since the adoption of our present Constitution. The discoveries of our people, and the adoption of the discoveries made by others, with instructions given, have made the growth of scientific information in the same period in our State a

matter of constant amazement. In education, agriculture, and science it is necessary only to call attention to the subjects to startle a person with his own observations and the evidences all about him of the amazing advance in these regards. Now, when I ask my fellow-citizens in this State whether we have progressed in sound morality since 1851, they stare at me and either speak with great hesitation and uncertainty or ask time to consider before they attempt to answer at all.

We are proud of our advance in education, in agriculture, and scientific information in Indiana during the last twenty-five years; but no man is at all proud or satisfied with our advance in morality. I do not want to speak disparagingly upon this subject further than I am compelled. We have advanced in moral culture, and have reason for encouragement, not so much at the extent of our advancement, but that we have advanced at all, and have not in fact retreated. I think no man who has made careful investigation will claim that moral improvement has been equal to our improvement in these other subjects. This same state of facts in regard to Indiana is true generally in regard to every other State in the Union. There has either been less interest taken in the subject of morality than in education, or agriculture, or the sciences, or else there has

been some greater obstruction in this line of culture. Let us look briefly at the methods of promotion in other subjects, and for the obstruction thereto, and for the promotion of morality and obstruction thereto, for the purpose of finding, if possible, the cause which has produced this disparagement. The State of Indiana, by her constitutional provision and legislation based upon it, took the subjects of morality, agriculture, scientific information, and education under its special patronage for the purpose of promoting these subjects. For the purpose of promoting agriculture the Legislature passed laws providing for a system of highways, drainage, and many other matters, and also, by penal acts, fines, and imprisonments, restraining stock from running at large to prey upon the crops, fencing of railroads, cutting of noxious weeds, and has encouraged by rewards care in the production of the soil, and in every way preventing what would result in or tend to the general obstruction of agriculture. There is not one influence that is known to have an injurious effect upon general agriculture that is not forbidden by the law of Indiana and sought to be removed.

Concerning the subjects of education, agriculture, or science, which are all the subjects except morality mentioned in the constitutional provision referred to, nothing is permit-

ted by law, or in any way legalized or sanctioned, which is understood to have a tendency to interfere with or obstruct the work or development of either of these subjects.

These subjects have a free course and a full chance to exert all their influence. Their pathway is cleared before them. Universities, colleges, schools, and about sixteen thousand teachers are maintained and enormous expense incurred by the State in specific instruction upon these subjects. For all of this, with the great prospects ahead of us in these regards, let us all rejoice. Our school law provides that teachers must pass an examination, covering certain branches of education, and such branches must be taught, but they are not required to be examined upon moral science or to teach it.

In many schools in Indiana, heretofore, teachers have been given to understand that they were not to teach the whole truth upon certain subjects which are not only matters of scientific truth, but also important to the interests of public morality.

To the credit of our Legislature it passed an act compelling school board trustees, superintendents, and teachers to teach the whole truth. It is humiliating to admit that evil influences have been so great in our State, as has been

true of many other States, that even science was compelled to close its lips.

It is another evidence of the irresistible power of moral force that it can gain such victories.

Strange as it may seem science had submitted and the public school system had been subjugated, and morality alone came to the rescue.

Hereafter the injurious effects of alcoholic drinks and narcotics will be taught under compulsion in all our public schools. Morality is the protecting angel for all truth.

I have said that the Legislature of Indiana has taken care and provided at great expense and by suitable means for general education and specific instruction in agriculture and the sciences, but I inquire, What system and what means have been provided for specific instruction in moral science?

This science, though made the chief subject and greatest concern in the Constitution, has absolutely no legislative provision for its promotion. There must be legislative provision made for intsruction in the principles and rules and their application in moral science. Whatever instruction in the great department of morality there may have been in the public schools it has been incidental and as a side matter of minor importance to other branches of education of absolute importance.

Heretofore the Legislature has contented itself in regard to this subject by a somewhat vigorous effort to suppress acts of immorality.

The theory is thoroughly settled that if an act, transaction, or business is immoral, or tends to immorality, it must be suppressed by law.

The mere effort, however vigorous, on the part of the State to suppress immorality is not sufficient to meet the demands upon this subject.

But the effort to suppress immorality has not been and is not now consistent, and fails at most important points.

I call attention to the suitable means and methods by which the State has sought to promote the interest of these other subjects.

For education it has chartered and supports great institutions and a general system. For agriculture it has done the same thing. Like provisions have been made for science.

In 1867 the Legislature of Mississippi granted a charter (license) to the Mississippi Agricultural, Educational, and Manufacturing Aid Society, with the right to issue and sell lottery tickets and to conduct the lottery business in consideration of the annual sum of $5,000, and $1,000 in tax and one half of one per cent of the amount received from the sale of the tick-

ets to be paid into the State treasury for the privilege granted.

A question arose as to the validity of that act of legislation. The society claimed that it had secured vested right by virtue of that legislation, public acquiescence, and large investment of money in the business. That question passed through the regular course to the Supreme Court of the United States in the case of Stone et al vs. Mississippi, 101 U. S., 814. That court considered the act of the Legislature with all that it contemplated, and also the lottery business with all that it contemplated, and the real character of the business, and decided that the lottery business was inherently immoral, and the legislative act chartering the business was void. Concerning lotteries the court said: "We are aware that formerly, when the sources of public revenue were fewer than now, they were used in all or some of the States, and even in the District of Columbia, to raise money for the erection of public buildings, making public improvements, and not infrequently for educational and religious purposes; but this court said, more than thirty years ago, speaking through Mr. Justice Grier, in Phalen vs. Virginia, 8 How., 163, 168, that 'experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lot-

teries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; and it plunders the ignorant and the simple. . . . . That they are demoralizing in their effects, no matter how carefully regulated, cannot admit of a doubt. When the government is untrammeled by any claim of vested rights or chartered privileges no one has ever supposed that lotteries could not be lawfuly suppressed, and those who manage them punished severely as violators of the rule of social morality."

Of the legislative act the court said, "No Legislature can bargain away the public morals or the public health or the public peace." The court held that the act of the Legislature of Mississippi licensing the lottery was void.

Finally the public came to see by the light thrown upon the business that it was immoral and dishonorable. The decision of the Court of Appeals in Kentucky to which I have referred followed, and declared that the legislative act licensing the Louisville Lottery was void, and that no act could be passed that would be valid for such business because of its immorality, and the Louisville Lottery fled from the State of Kentucky never to return.

A like history has been recorded of the

Louisiana Lottery since the Louisville Lottery was driven out of existence by the courts.

The law is now settled in this nation that no Legislature can license the lottery business, because of its bad effect upon public morals.

The United State government has arrayed all its power and closed its mails against this business, and woe be to the transgressors.

President Harrison made it the subject of a special message to Congress, urging immediate action for the protection of an imperiled nation.

The Louisiana Lottery had secured such an influence in the State of Louisiana that it is evident it could not have been broken up by action of State authorities if the United States government had not closed its mails and declared hostility against it.

The judicial action against the lottery business is perhaps the best illustration of the wonderful growth in public sentiment against immorality, and also forcibly shows the growth of legal comprehension of moral principles and their application to civil affairs.

Extensive and expensive provisions have been made for teaching and promoting all the other subjects mentioned in the constitutional provision in Indiana except morality, and futile attempts have been made to authorize things against the interest of morality.

It may be said that the State in the erection of great buildings, and a school system and costly provisions for education, and by her chartered institutions and aid to agriculture, and her encouragement and aid to scientific culture, has sought to aid and has promoted the subject of morality.

But, I ask, Has not morality, unaided by the State, done more for each of these subjects named within the Constitution than they have done for morality with all their aid?

I humbly claim for morality stately buildings, chartered institutions, public funds, legislative provision commensurate with the importance of the subject—in the language of the Constitution, "suitable means" for its promotion.

Jehoshaphat, in the third year of his reign, sent to his princes Ben-hail, Obadiah, Zechariah, and to Nethaneel and to Michaiah, to teach in the cities of Judah, and with them nine Levites and two priests.

"And they taught in Judah, and had the book of the law of the Lord with them, and went about throughout all the cities of Judah, and taught the people."

It is recorded that Jehosaphat waxed great and had much business in the cities of Judah. There certainly ought to be somebody, and by some means officially, teaching in the cities

of this nation upon the subject of morality.

Reading thanksgiving proclamations by our presidents and governors we are almost startled by the devout spirit manifested, and if it were not for our observations would expect to see every place of divine worship filled with people on the day set apart for that purpose.

The rush of college students and public school boys, with an occasional college president and professors, with an army of young and middle-aged men on such occasions to witness football games and other sports, and the meager attendance on divine worship are enough to start the inquiry whether this custom has not become a mockery and would better be abandoned.

I venture to suggest that even the sermons on the occasions seem to be vieing with the proclamations in high-sounding, far-away piety and not quite enough of common morality for strengthening the citizen in the duties of everyday life.

We have up to this point been considering the substance of things, what has been accomplished, methods tested, and the principles at work.

Mythology says that Hercules was destined by the gods to complete twelve great undertakings before his work was ended.

Shall we stop here in the consideration of

the work and destiny of the twin giants, moral law and civil law?

To advance is not an easy undertaking,

Morality fights no sham battles nor assails an unarmed foe.

We must take our places in the ranks and perform our duty or stand aside while the column goes by.

We can hear the marching columns sing:

"We have battles to fight;
We have foes to subdue;
Time waits for no man,
And we wait not for you.

"The mower mows on,
Though the adder may writhe,
And the copperhead coil
'Round the blade of the scythe."

We have called attention specifically to some things that have been tolerated and some that have been approved and authorized by law, but have at last been forbidden and suppressed because of thier immorality. As a matter of legal principle to which there is not an exception in its application, whatever is immoral or tends to immorality must be suppressed and cannot exist by permission. The great undertakings that civil government is

destined yet to complete no man has presumed to number. That they are many no man will question.

That these are to be worked out by citizens through the application of legal principles and methods must be clear to us all.

CHAPTER XIV.

No Privileges for Evil.

FROM considerations presented in former chapters in this work I feel safe in saying that whenever the question is settled that any business or any conduct is immoral, that settles another question that follows as an inevitable conclusion, that business or conduct at once becomes an outlaw and cannot be given any legal status by any power known to civilized government.

It has taken a long time in many cases to settle the question of immorality.

As has been shown in many cases cited herein, enterprises, institutions, and conduct long accepted and looked upon as not matters of public concern, are sometimes suddenly seen to be improper and lawless and dangerous to the public welfare. In many cases long discussion, growth of intelligence, and sometimes bloody strife have been required to bring out full comprehension of the real character of

great evils. Some of the greatest evils **have not** always and under all conditions **been evils** or immoral.

Human slavery has its favorable conditions.

Daniel was a captive slave in Babylon, and Joseph was sold for twenty pieces of silver, but each reached a position that would gratify the most ambitious, and for which a man could afford to become a slave. Eleazer was Abraham's slave, but no greater advantage could have fallen to the lot of Eleazer, and was greatly to Abraham's advantage.

In unnumbered cases men and women, brought by force from their savage and beastly condition in Africa to the United States, became the property and were brought under the influence of humane masters and religious teachings, which has been, and will be to them and to their children an untold blessing in all time to come.

Many have been the cases where the slave in old age, disability, or sickness was free from care and his wants met by a kind-hearted master.

Many things could be truthfully said in favor of African slavery.

We can easily call up the scene of life before the civil war in this nation, when, as they were called, the old colored aunties and uncles clung to their master and mistress and to their

children with a childlike and simple affection that was most beautiful.

I have in mind actual cases where these old uncles and aunties loved their master and mistress, and cared for and loved their little and grown masters and mistresses in the family, with that devotion we all long for, but seldom see, in the homes in these days between employer and employes. That tender relation between Uncle Tom and Little Eva, truthfully pictured by Mrs. Stowe, has made many a little girl who has contemplated it wish she had such a faithful friend as Uncle Tom.

I say that slavery had many things that could be said with great force in its favor. So strong were these favorable arguments for slavery that it took two hundred and fifty years and an awful experience to overcome them. That other side of slavery given in **Uncle Tom's Cabin** was always true in the United States.

Slavery was always wrong in principle, and its general influence and results were always bad.

Thomas Jefferson, when he contemplated the nature of the institution of slavery more than fifty years before the civil war, uttered the honest sentiment of his heart when speaking of slavery. He said, "I tremble for my

country when I reflect that God is just and that His justice will not slumber forever."

Well might Jefferson tremble under such contemplation when he saw that institution recognized and to be continued by public acquiescence.

Jefferson's fears were well founded. A just God did amid the thunder and lightning of war destroy the wicked institution.

Slavery, from that fatal day in the year 1620, was always legally wrong and immoral as an institution, and by permitting it to exist anywhere in the United States the people invited a storm that swept it away at such awful cost. Every year that it continued made the cost of its removal the greater.

There were many things that could be said for the lottery business. It was often used as a method for raising money for good purposes — in erecting public buildings and educational enterprises, and for many other purposes that were laudable. In such cases some consideration was given for every investment and ticket sold.

It took centuries to fully expose the wrong principle and immorality in this business. When that was accomplished the lottery business became **per se** unlawful, and cannot be authorized under any conditions.

The United States government is founded on the right of religious liberty.

Men may teach, and organize to teach, if they desire, that there is no God, or they may adopt any form of worship and teach anything as to the character of the divine Being they like, or promulgate any religious creed, so long as they keep within the bounds of public morality. But they cannot transcend that boundary.

The Mormon Church taught and practiced plurality of wives. For that immorality in religious belief the government by force broke up their religion, made it unlawful, and confiscated the great estate of Brigham Young. Many good things could be said for the Mormon Church, but in so far as it encouraged or promoted immorality it was an outlaw, as in any other case.

It might be said that if two or more persons for mere pastime and amusement, see fit to put up a small wager on a quiet game, it concerns no one but themselves.

But gambling is on a wrong and dangerous principle and is immoral, and for that reason all public and private gambling, even in the quietude of a private home, is rigidly forbidden.

I have called attention to the fact that the theory of chartering, incorporating, and li-

censing proper and useful enterprises has wonderfully developed and is growing in favor rapidly.

The words chartered, incorporated, or licensed mean substantially the same thing.

While this theory has worked satisfactorily and grown in favor when applied to useful and moral enterprises, it has correspondingly worked unsatisfactorily and disastrously whenever applied to any immoral enterprises. There is not an exception to this rule to be found in history, covering three thousand years, in the practical working of every system which gave such theory recognition and consent, whatever might have been the regulations and restrictions to immorality. This theory has been long and thoroughly tested and abandoned. Let us not be extravagant or reckless in statements, but let us be just as careful not to be timid, for I am now dealing with an extremely important matter.

I call attention to the many cases cited heretofore in this work, and especially to the cases wherein chartered rights without, and sometimes for large compensation to the States have been granted by legislative acts for lottery enterprises, and which acts have been held to be void. We boast, and well we may, of our rapid growth in intelligence, moral sense, and comprehension of legal

principles. Every person who claims to have been benefited by this advanced condition of affairs must be prepared to look at any matter of public concern calmly and thoroughly.

I concede that there are often immoral influences connected with a useful and moral business; but the prevailing tendency and influence in any useful business tend toward morality. Sometimes a useful business is conducted in a dishonest way and upon dishonest motives; then the whole business is dishonest and immoral, for which the proprietor may be punished and his business broken up.

I have in mind men who engaged in business as real estate brokers, which is a legitimate and moral vocation, but they conducted it in a fraudulent and illegal way, on account of which they are now paying the penalty in the State prison, and their business is broken up and their ill-gotten gains restored to their victim. Such transactions cast no taint of illegality or odium upon the legitimate business of real estate brokerage. I have known gamblers voluntarily to restore ill-gotten gains; and perform deeds of charity and kindness; but that does not make gambling the less unlawful.

In the saloon business a sale and purchase of intoxicating liquors may be made that

would not be immoral on either side; more than that, a sale and purchase of intoxicating liquors may be made in a saloon where the transaction would be highly proper on both sides—in case of an emergency.

But no man undertakes the saloon business for the purpose of selling to persons only, who would not in any way be injured, or who would be better for buying it.

I ask any candid man to contemplate the bsuiness of the best possibly conducted saloon for one busy hour and answer to his own judgment what is the prevailing tendency of that business in that saloon?

But the question is not to be determined by contemplating the best nor the worst conducted saloon. It is the general tendency of the saloon business that must be taken.

The protection of morality does not depend upon legislative enactments, though the enactments of legislatures for this purpose are very many. If such enactments were all repealed, immorality would still be unlawful, and could be suppressed on common law principles as well as on the ground of public necessity.

The Supreme Court of Indiana, in the case of the Columbia Athletic Club vs. the State, 143 Ind. 98, quotes and approves the declaration of Lord Cottingham and Judge Redfield's

comments thereon; after which the Court uses the following language: "The Constitution puts its special bans upon lotteries, duels and all infamous crimes; while at the same time it provides for the moral and intellectual improvement of the people. A statute which would attempt to authorize prize-fighting, would most certainly be opposed to the spirit of the Constitution; and indeed that of the law itself."

An unlawful business gets no right by reason of long existence, or because of public acquiescence, or against an individual who suffers injury, because of his acquiescence for a long time. Lawlessness can never become lawfulness by long time existence, tolerance or acquiescence.

Let me make myself clearly understood upon this question. I concede that many times the higher courts have decided that Legislatures have the power to license the sale of intoxicating liquors, and I fully concede that the Legislatures have such power for proper purposes and under proper restrictions and regulations. The Supreme Court of the United States defines this legislative power in the following language: "As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its

evils." This language of the highest court lays down the principle of law involved in this question. I am not lecturing on temperance or the use or non-use of intoxicating liquors, but I am discussing the saloon, the place of resort for the purpose of selling, buying and drinking intoxicating liquors on the premises; the institution, the licensed method for the sale of intoxicating liquors.

My application of the principle to the case in hand is that, as the saloon business does not limit nor lessen, but encourages and augments the evils which arise from the sale of liquors; as the history of one hundred years thoroughly establishes that the saloon business, with its places of resort, is the worst and most dangerous system for the sale of liquors that could possibly be provided; as the saloon business is not necessarily connected with the sale of liquor, as the sale of intoxicating liquors might be provided for, for all necessary purposes, without connection with the saloon business, or any place of resort, for the convenience and purpose of drinking the same, therefore the Legislature does not have the power to license the saloon, the dangerous and evil resort.

This I claim to be the correct position, even if the question of morality were not involved

in the case and it stood upon the questions of public health and public safety.

A territorial government was established for the Northwestern Territory in 1787. That Territory covered the region north of the Ohio River, east of the Mississippi River, and embraced what are now five States. The legislative branch of the government consisted of the governor and three judges. The very first act of the legislative body was a law providing a license system for saloons. That was more than one hundred years ago. I hold up before you that license act beside the present saloon license system enacted by the Indiana Legislature in 1875, prepared and enacted upon the demand and to the satisfaction of the liquor interests of Indiana, and call your attention to the fact that the difference between these two acts is of immaterial and of trifling importance. In many respects they are identical, word for word. For one hundred years, except about four years, a license system has ruled over the soil of what is now Indiana. One hundred years is long enough to test any system of legislation. The experience and observation of men for the last hundred years, the laws of inheritance, the disposition of property by will, the rights of married women, the rights and uses of property, have undergone great changes. A public system of edu-

cation has been devised, business enterprises and inventive genius have stimulated thought into marvelous activity. The dense forests and wild prairies have been converted into fruitful fields, prosperous homes and great cities. Conditions, social and political, have undergone great changes. The rights of State, of men and property, have been better defined. A whole race has been set free. Legislation and judicial decisions have done much to promote and protect fair dealing in business and the suppression of all phases of vice and fraud; a lottery system that was so highly regarded long after this saloon system was adopted that it was legally connected with education in the Vincennes University, and in the construction of churches, and even public buildings in the capital city of the nation, has long since been declared a crime, and suppressed in Indiana and in all other States. Old theories and systems of legislation long ago fled before the marching columns of our advancing civilization. New theories have been tested, developed and abandoned. But a license saloon system has survived them all, without material change, in this one hundred years of progress in all things else. The saloon license law of Indiana remains to-day substantially the same as the saloon license system for the Northwestern Territory, adopted

more than one hundred years ago. After one hundred years of trial of this measure the highest judicial tribunal of this nation declares that:

"The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained in these retail liquor saloons than to any other source."

The moral and Christian sentiment of the whole world cries out against it. And yet this worst of all evils and institutions remains and retains its foothold. These saloons that were trifling in their influence and power a century ago have, under the fostering care of this vicious system, grown so great in wealth and power that they defy the laws we have and the government under which they exist, and boldly announce that the laws cannot be enforced against them, and sneeringly defy the intelligent and civilized sentiment of the nation.

It seems to me that under the enlightenment and development of civilization and education the most surprising thing presented to our view is the continuance and prosperity of this greatest crime and misery producing system. That of all the theories and systems of legislation upon any subject the worst and most destructive should survive with us more than

one hundred years is beyond comprehension. I arraign this system before the good citizens of this State and the whole nation, with its one hundred years of record and history, every page of which is stained with blood, and which is condemned from every source worthy of consideration, and charge it with every crime known to man, and deny that it has one redeeming trait. The only plea offered in its behalf is one of confession and avoidance, admitting that it is an evil, but claiming that it is a necessary evil. I demur to this plea, upon the ground that there never was and never can be, founded upon any legal principle, an evil that is necessary. If an institution is evil both principle and the whole power of the law must be arrayed against it.

Some legal propositions are thoroughly settled by the harmonious decisions of the highest courts:

1. That morality, as contemplated in the Constitution and laws of Indiana, is the morality that is contemplated in the Christian religion.

2. That the Constitution of Indiana demands the Legislature to promote and protect morality.

3. That the saloon business is an immoral business.

Hence the inevitable conclusion is that li-

censing the saloon business is licensing immorality and is bargaining away the public morals and the public safety.

I admit that Supreme Courts of many States have held that this is a lawful business; but I stand unawed in the presence of these courts and declare that an immoral business cannot be a lawful business, however apparently solemn may be the act of the Legislature attempting to authorize the same, and that the saloon business is more immoral and more unlawful than the lottery business. The Legislature may authorize, license, and protect what is right, and in the interest and in harmony with the public welfare, but it may not license an immoral or evil business. I am not attempting to avoid or shrink from decisions of our Supreme Court in Indiana, which have specifically declared that the saloon business is a lawful business and that the license system is valid. Let me recognize and admit these decisions fully, and all there is in them, as precedents upon this question.

The courts of England had held, and the public had acquiesced for more than fifty years, that slavery was a legal institution; but I have given you the facts and history of the case in which Lord Chief Justice Mansfield, more than one hundred years ago, speaking for the King's Bench and to the civilized world,

utterly disregarding all precedents, uttered the Christian and civilized sentiments of the people, as these sentiments had grown to be, that such an inhuman and immoral institution could not be lawful.

I have called your attention to the decision of the Supreme Court of Indiana in 1879, which declared that a lottery system had become a part of the chartered and vested rights of the Vincennes University as a perpetual right, and based that decision upon numerous precedents; but the same high court, to its praise and honor let it be said, at a later day, looking again at the question with more light, overruled its own decision, disregarded all the precedents upon which it was based, and declared as the law of Indiana that the lottery business could not be given legal existence nor vested rights in our State, because of its immorality.

I have called your attention to the fact that, though slavery had been recognized by the Supreme Court of the United States, and acquiesced in by the people of the nation as a lawful institution for more than two hundred and fifty years, yet there came a day when it was necessary to destroy and abolish that institution, though it existed only as a domestic institution in individual States, in order to save the government; and that great end was ac-

complished by a proclamation that stands as the greatest act of any man in the whole history of the nation.

Whatever may be the precedents, however much prejudice, vast wealth, and political considerations may have been able to claim and accomplish, the demand of civilization, the demand of the public welfare, and demand of sound legal principles, from every source of public safety comes the ceaseless demand that immorality shall not be licensed nor promoted; "that the greatest source of misery and crime" shall not be protected, but must be destroyed.

The Supreme Court of Indiana, in the case of Haggart vs. Stehlin, illustrated to the people its power and courage, its high integrity and regard for legal principles and sound morality, by a great advance in its declaration of the law as founded upon morality. Whatever that high court may have held at different times in years gone by, there is a day coming, and I believe near at hand, when it will strike a blow, as did the King's Bench in England at slavery, and as our own Supreme Court did at the lottery business, and destroy the license saloon system of our State, as will other courts of other States.

Indiana boasts of her institutions of learning, churches, patriotic devotion, and the prowess of her sons on the field of battle. She takes

just pride in her record for loyalty. Let me call attention to the fact that loyalty to the State, to the Union and government, requires that morality shall be maintained with the same zeal that maintained our cause against George III and against disunion.

There is no disloyalty equal to the participation in, or consent on the part of the people that any system of immorality shall have a camping ground upon our soil. It is disloyalty and treachery to the government to support any man for official position who is dominated by saloon influence.

We have in Indiana many institutions established and maintained at public expense, such as Deaf and Dumb Asylum, Blind Asylum, Insane Hospital, State University, Normal School, Reform School for Boys, and a School for the Feeble-minded.

There is one other institution for which there is a crying need, and that is a School for the Feeble-hearted.

A State and national organization has been perfected for the special purpose of maintaining and protecting the saloon business. This institution is now flourishing in Indiana. It announces its purpose, among other things, to control legislation. The meetings of this organization are not opened and closed with prayer. It does not depend on prayer. It

defies God and man. It has tremendous success and power to overawe and intimidate ambitious politicians, legislators, and many officers whose duty it is to enforce the law. Its success lies in the fact that it is courageous, desperately in earnest, and uses its money and influence without stint. Whenever the opponents of this business become as courageous and consistent as the men who are engaged in this business, then the victory for sound principles, law, and justice will be won.

Much is made, and must be, of the office of love in accomplishing the reformation of individuals. But love is misapplied if exercised on behalf of immorality or lawlessness. These things are not to be loved, but are to be hated. Love is for humanity, to be exercised in its behalf and against all evil influences and institutions. Abraham Lincoln loved the government of the United States when he put two millions of men in the field, clothed in military uniform, armed and supplied with munitions and deadly weapons, to put down a rebellion by bloody war. General Grant loved his government and the flag when he stretched his long lines of blue in the wilderness, and fought it out on that line with shot and shell and minie ball, with fixed bayonets and flashing sword, until he established the supremacy of law.

It is both just to the Union soldiers and magnanimous to the foes they opposed to say that the late civil war would have been short-lived if it had not been that General Robert E. Lee and the armies he commanded loved a cause which moved men to stand in the jaws of death undaunted.

If a man loves the right he hates the wrong. If a man loves God he hates Satan, and loves God in just the same degree that he hates Satan.

If we love the families of the drunkard and the drunkard himself, and seek their welfare, we hate the saloon institution as we hate Satan. We make much of the unbounded love of Christ, and this cannot be overdone. The great purpose of his life and ministry was to teach this love; but we fail to comprehend the whole character of the good Master if we study only one side of it.

He went one day into the temple and saw there those who sold oxen and sheep and doves, and the money changers. These people had been licensed by the high priest for a large license fee to conduct these enterprises in the temple. When He who loves as no man ever can love saw this pollution of the temple and the wickedness of that license system, with fire in his eye and thongs in his hand he drove those people out of the temple. I im-

agine I can see the panic that reigned in that sacred inclosure as the gates flew open and the animals and men rushed pell-mell into the streets to escape pursuit and wrath.

It is high time that Christian civilization, as it contemplates the wickedness, devastation, and ruin produced by a licensed saloon system, should rise in righteous indignation, and with fire in its eye drive this business and the system out of our State. And the same duty and the same demand rest upon the citizens of every State in the Union. There are other very important matters of public interest which deeply concern good morals. These require and must have our attention; but the saloons and liquor business have combined, and stand alone as organized evils and immoral influences. This combination appears publicly in the field, waving its banner, with its lines formed, has issued its declaration of war and announced its purpose to maintain, at all hazards, the most demoralizing of all evil influences and the present system of public consent and lawlessness. This organization exhibits its muster roll, shows its force, calls attention to its bank account. This organization must be encountered and overcome by manly and patriotic effort. I am not urging nor expecting that all these great undertakings shall be accomplished in one day,

or that any one of them can be disposed of at once; but the demand and duty upon us are that every day shall record an honest day's work toward the accomplishment of the ends sought. There must be steps taken, and there can be only one step taken at a time, but every step should be an advance. Earnest, candid men have no time for equivocation, evasion, or subterfuge.

The Jordan takes its rise from the melting snows of Mount Hermon, is augmented by the pure streams and rivulets that empty into it. It flows through what was once the richest land and the most beautiful valley in the whole world. Its waters are clear as crystal, delicious and refreshing to the taste; but it empties into the Dead Sea, in the waters of which there is no living thing, and on the shore of which nothing can grow save the apples of Sodom. So the temperance movement takes its rise from the melting sympathy of human hearts; on its course receives and is augmented by the prayers, energy and contributions that flow into it through every valley and from every pure fountain. But we have allowed the enemy to dig the channel and divert the course until this pure, clear, refreshing, life-giving stream has been emptying into the Dead Sea of political corruption, which is filled with dead men's bones and col-

ored with human blood. The flow cannot and must not be stopped; but the natural channel must be opened, so this stream shall empty into the great ocean of God's love.

I looked on the cyclorama of Gettysburg—the greatest picture of a real battle that was ever painted. That is the picture of war with all its horrors. After having been enrapt and held to the most intense contemplation of that bloody scene, I turned away and said to myself: "Can it be possible that a people speaking the same language, citizens of the same government, bound by the ties of consanguinity, revering the same history and ancestry, can be brought into such a struggle as this?" That battle ought never to have been fought, and never would have been fought if the citizens of this republic had performed their patriotic duty in time of peace, and had not suffered themselves to be misled by mere partisans into delusions and efforts to maintain an immoral institution.

Shall we be swayed by prejudice, controlled by designing men, cower before the lawless, betray the government we claim to love, and leave to another generation to settle, by the flow of blood and awful anguish, questions which we ought to settle, or shall we learn lessons from the past and avoid disaster?

There can be no safety for any people or

government outside of sound legal principles. There can be no sound legal principles unless founded upon morality. These facts must not be confused, obscured, nor lost sight of.

CHAPTER XV.

The Scope of Morality.

THE Court of Appeals in New York, in the case of Lyon vs. Mitchell, 36 N. Y. 235, hereinbefore referred to, among other things in the definition of morality, said: "It hath four chief virtues—justice, prudence, temperance and fortitude." That is, morality means all that the words justice, prudence, temperance and fortitude." That is, morality means all that the words justice, prudence, temperance and fortitude combined, mean; and it means a vast deal more than that. There are very few words in the English language so full of meaning as this word, morality.

Morality in civil affairs is a principle of law, irrevocable, for the protection of honest men and honest business, and the suppression of dishonest men and dishonest business.

No man nor company of men, no legislature nor judicial tribunal, invented nor created the principle of morality; neither is there any power anywhere to modify or repeal it.

This principle was ordained when man came into the world.

Efforts have been made to maintain civil government without regard to morality, and even in antagonism to it; but all such efforts have been failures and proven to be disastrous. Moraltiy must be the keynote, modulating the hum of commerce, to avoid discord.

Morality must be recognized and have its way in civil government, or there is no security.

If measurements, scales and representations are adjusted by the rules of morality, there will be no panics in business circles.

Morality is the only arbiter between the rich and the poor; between capital and labor; between the weak and the strong.

Morality must be so distinctly presented and made so familiar, that it can be recognized when it makes its demands.

Morality is a principle upon which no genius ever invented an improvement and there is no possibility that such will ever be done.

In civil affairs, no word is so assuring and inspiring; in social affairs, no word is so general or so full of meaning; in all the affairs among men—morality is the good angel of peace.

Its whole and sole mission in the world is as

a messenger of peace and prosperity to civil government and social life.

Morality is not in conflict with spiritual religion, but is its co-worker. Whatever may be the individual belief, or want of belief, upon the subject of religion, there is no substantial contest over the matter of morality.

We make no objection to the words, ethics, equity, altruism, honesty, or any other proper word used in a proper sense; but the word fullest of meaning and force and possibility, is morality, and this word is entitled to its place, not to be displaced or weakened by any forced substitute.

I claim for this word its rights to its place, and that no other word shall intrude upon the sacred premises to which the word "morality" is entitled to undisturbed possession and command.

Away back before the organization of the United States government; before the organization of any of the colonies in this country; before the landing of the Pilgrims on Plymouth Rock, or the Hugenots in the South, or the Cavaliers in Virginia; before the discovery of America by Columbus; before Caesar crossed the Rubicon; before the Christian era; before Moses carried the tables of stone down from the mountain top; away back to the date when Almighty God set up His reign as a civil ruler

—morality was planted on the earth, as imperishable as the land and the shining sun.

This principle was fixed by divine wisdom and foresight, to run with the land and sea and the people who occupy and use them.

The prosperity and general welfare of the human race, civil, social and commercial, in all the past, have corresponded to the degree of observation of this law; and their debasement and ruin, to the degree of their disregard of this principle.

It is certainly the religious and patriotic duty of every citizen to study, practice and teach the doctrines of this great principle.

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